The Central Law Journal.

ST. LOUIS, SEPTEMBER 4, 1891.

A valuable contribution to dog law is found in a recent decision of the Supreme Court of Massachusetts, in Whitmore v. Thomas, where the court held, in an action for personal injuries from the bite of a dog alleged to have been kept by the defendant, that evidence that the dog belonged to a hired man, who lived with the defendant, and who kept the dog with him with the defendant's consent, was sufficient to take to the jury the question whether the defendant was the keeper of the dog, although there was no direct evidence that the dog was kept for defendant's benefit or service, and there was evidence that he exercised no control over it. The court below ruled, as matter of law, on this evidence, that the defendant was the keeper of the dog, but this judgment is reversed. The opinion discloses the fact that there is considerable judicial authority upon the question who is to be deemed the keeper of a biting dog.

The graduates of Harvard Law School may turn, with pardonable pride, the pages of the first catalogue of the officers and members of the Harvard Law School Association which has just been issued. The association was organized on the occasion of the two hundred and fiftieth anniversary of the founding of Harvard College, and among its numerous members are many of the leading statesmen, judges and lawyers of this country. The catalogue contains the constitution of the association, the officers, list of members by States and territories, list of deceased members, summary of membership by classes and alphabetical list of members. It also contains beautiful half tone pictures of the old and new law school building.

Among the measures which came up for consideration in the last session of the New York legislature was one which had for its object the relieving of banks from responsibility for losses through forgery. The subject is invested with special interest since the decision of the New York Court of Appeals in affirming the judgment of the lower court in the case of Shipman & Laroque v. Bank of State of New York, allowing the firm to recover funds paid out by the bank upon forged checks. In a recent issue we indicated in brief the defense instituted by the bank, namely, that payment was resisted on the ground that the checks were payable to the order of fictitious persons, and were, therefore, payable to bearer, which contention is sustained by an English statute, also that there had been negligence on the part of the firm. From first to last the only person guilty of deception or even of negligence in the matter, was the forger, Bedell. The firm by whom he was employed in the capacity of confidential clerk signed the checks in good faith, relying on their confidence in his representations. The banks which accepted had no reason to suspect the depositors, and the bank which paid them saw no ground to question their genuineness. The further fact that the makers did not protest against their entry in the pass-book was evidence that they themselves had acknowledged the check as correct. While nobody, therefore, was in fault, the bank officials were, if possible, those upon whom the least weight of responsibility would seem to rest, and yet the law throws upon them the brunt of the loss. It is obvious that the banks should adopt some practical measure to protect themselves against losses of this kind. Their obligation to ascertain the genuineness of indorsements, as well as the genuineness of the signatures of the makers, is firmly established by law. Indeed, it could not well be otherwise, for if a bank could not be held responsible for the payment of forged checks, few men would have sufficient hardihood to leave their balances in the hands of irresponsible agents who are liable to be deceived at any time.

NOTES OF RECENT DECISIONS.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — RAILROAD COMPANIES — SUNDAY TRAINS.—In Norfolk & W. Ry. Co. v. Commonwealth, 13 S. E. Rep. 340, the Supreme Court of Virginia decide that Code Va. § 3801, forbidding the running of trains on

Sunday between sunrise and sunset, except wrecking, passenger, stock, and United States mail trains, conflicts with Const. U. S. art. 1, § 8, providing that congress shall have power to regulate commerce among the several States, and is void as to trains running between points in different States. Lacy, J., dissents. The court, after citing the cases construing the constitutional inhibition, says:

There is, indeed, what has been termed a kind of neutral ground which may be constitutionally occupied by the State, so long as it interferes with no act of congress. Thus, where the subject is local in its nature or sphere of operation, such as the establishment of highways, the construction of bridges over navigable streams, the regulation of harbor pilotage, the erection of wharves, piers and docks, in these and other like cases, which are considered as mere aids rather than regulations of commerce, the State may act until congress supersedes its authority, but where the subject is national in its character, admitting of uniformity of regulation, such as the transportation and exchange of commodities between the States, congress alone can act upon it. The case of Cooley v. Port Wardens, 12 How. 299, is sometimes cited as an authority to the contrary; that is, for the proposition that, in the absence of congressional action, a State may regulate interstate commerce within its own territorial limits. But this statement is broader than the decision justifies; for it was expressly said in that case that "whatever subjects of this power are in their nature national, or admit of only one uniform system or plan of regulation, may be justly said to be of such a nature as to require exclusive regulation by congress." And in the very recent case of Leisy v. Hardin, 135 U. S. 100, 10 Sup. Ct. Rep. 681, known as the "Original Package Case," where the subject is fully considered, Mr. Chief Justice Fuller, in delivering the opinion of the court, used the following language: "The power to regulate commerce among the States is a unit, but, if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances until congress otherwise directs; but the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries and highways belong to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety and welfare of society, originally necessarily belonging to, and upon the adoption of the constitution reserved by the States, except so far as falling within the scope of a power confided to the general government." But these powers, it was said, "though they may be said to partake of the nature of the power granted to the general government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of congress in effectuation of the general power." And in the same case the principle was again announced, as it had often been before, that the transportation of passengers or of merchandise from one State to another is in its nature not local, but national, and therefore admitting of but one regulating power.

These authorities, which are only a few of many that might be cited to the same effect, are sufficient to show the invalidity of legislation by the States in regard to subjects of commerce which are in their nature national, no matter what may be the avowed object of such legislation, and that nothing is gained by calling it the "police power." The subject was elaborately discussed, and with his accustomed force, by Mr. Justice Miller in Henderson v. Mayor, 92 U. S. 259, where it was declared that, however difficult it may often be to distinguish between one class of legislation and another, it is clear, from our complex form of government, that whenever the statute of a State invades the domain of legislation which belongs exclusively to congress it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States. In Railroad Co. v. Husen, *supra*, it was said: "We admit that the deposit in congress of the power to regulate foreign commerce, and commerce among the States, was not a surrender of that which may properly be denominated 'police power.' What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health and safety. * * * But whatever may be the nature and reach of that power," it was added, "it cannot be exercised over a subject confided exclusively to congress by the federal constitution. It cannot invade the domain of the national government." Nor does it matter, in such a case, that congress has not acted; for it is now settled that the silence of congress is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the general government intended that power should not be affirmatively exercised, and the action of the States cannot be permitted to effect that which would be incompatible with such intention. "Hence," as was decided in Leisy v. Hardin, following many previous decisions, "inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as congress does not pass any law to regulate it, or allowing the States so to do, it thereby indicates its will that such a commerce shall be free and untrammeled." In Railroad Co. v. Pennsylvania, 136 U. S. 114, 10 Sup. Ct. Rep. 958, the court, in an opinion by Mr. Justice Lamar, said: "Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transaction, it is subject to the regulation of congress." It is also a well-established principle that an article of commerce transported from one State to another is protected by the constitution against interfering State legislation until it has mingled with and become a part of the common mass of property within the latter State; and, if this be so, *a fortiori* is it protected while *in transitu*. Brown v. Maryland, 12 Wheat. 419; Welton v. Missouri, 91 U. S. 275; Leisy v. Hardin, 135 U. S. 100, 10 Sup. Ct. Rep. 681. Tested by these principles, which are axiomatic, it is clear that the judgment complained of is erroneous.

That the transportation of the coal and coke mentioned in the proceedings was an act of commerce, national in its character, is too plain to admit of doubt; and it is equally clear that the legislation in question, in so far as it extends to a case like the present, is unwarranted and void. A statute which forbids the running of interstate freight trains between sunrise and sunset on a Sunday is by its necessary operation, no matter what its professed object may be, a regulation of commerce. At all events, it is an obstruction to interstate commerce, which for the purposes of the present case amounts to the same thing; for, in any view, it is an invasion of the exclusive domain of congress, and therefore void. To say that the State may, in the exercise of her police powers, enforce by statute the observance of the Sabbath, not as a religious duty, but as a day of rest, is no answer to the constitutional objection here raised. The validity of such legislation, when not in conflict with a higher law, is acknowledged by all, and its wisdom and propriety denied by none, certainly not by this court. But when, in a case like the present, it contravenes the constitution of the United States, the latter must prevail, because it is "the supreme law" in all matters relating to the regulation of interstate commerce. Such a statute, if passed by congress, so far as it concerns foreign or interstate commerce, would be valid, not, however, as the exercise of police power, but as a regulation of commerce; and the reason which would make such legislation valid as an act of congress makes it invalid as an act of a State legislature. As to the effect of the statute in question, if sustained, upon the commercial interests of the country, we need not stop to inquire. It is enough to say that, to the extent indicated, it is not valid. In Henderson v. Mayor, *supra*, it was decided that, whatever may be the nature and extent of the police power of the State, "no definition of it, and no urgency for its use, can authorize a State to exercise it in regard to a subject-matter which has been confined exclusively to the discretion of congress by the constitution." This principle was reaffirmed in Leisy v. Hardin, where it is said that such a subject-matter is not within the police power of a State, unless placed there by congressional action; and the observations of Mr. Justice Matthews in Bowman v. Railway Co., 125 U. S. 465, 8 Sup. Ct. Rep. 689, 1062, were quoted in the opinion, to the effect that, in view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it cannot be supposed that the constitution or congress have intended to limit the freedom of commercial intercourse among the people of the several States. The fact, if it be a fact, that the statute in question was not intended as a regulation of commerce, does not, we repeat, affect the case.

CORPORATIONS — LIABILITY OF STOCKHOLDERS — ACTIONS IN FOREIGN STATE. — In Bank of North America v. Rindge, 27 N. E. Rep. 1015, the Supreme Judicial Court of Massachusetts hold that, although the laws of Kansas provide that, if a judgment creditor of certain corporations is unable to find property whereon to levy execution, he may proceed by action to charge the stockholders with the amount of his judgment, a resident of New York holding an unsatisfied judgment against a Kansas corporation, which has no place of business in Massachusetts, cannot maintain an action in the latter State against a resident of California to establish his personal liability as a stockholder in such corporation, where no proceedings have been taken in Kansas to establish such personal liability. C. Allen, J., says:

It is to be regretted that we are not at liberty to determine the case upon an examination of the statute of Kansas, with the assistance of any construction which may have been put upon it by the courts of that State. But we must take the case as the parties present it to us. The question can hardly be considered as an open one in this commonwealth. This court has often declined to exercise jurisdiction to enforce a liability imposed upon stockholders in corporations established in other States, under statutes of those States. In Post v. Railroad Co., 114 Mass. 341, 345, 11 N. E. Rep. 540, it is said: "This court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty, or a suit opposed to the policy of our laws, but because it is a suit against a foreign corporation which involves the relation between it and its stockholders, and in which complete justice only can be done by the courts of the jurisdiction where the corporation was created. See, also, New Haven Horse-Nail Co. v. Linden Spring Co., 142 Mass. 349, 353, 7 N. E. Rep. 773, and cases cited.

The case at bar furnishes a strong illustration of the propriety of this course. If the plaintiff, as a creditor of the Kansas corporation, without obtaining any previous judgment in Kansas establishing the defendant's liability as a stockholder, can maintain an action directly and in the first instance against him in Massachusetts, for the purpose of charging him as a stockholder under the qualified liability set forth in the declaration, then it would follow that the plaintiff might also institute a similar action against him in California, or in any number of other States where service upon him could be obtained. The plaintiff might also institute similar actions for the same debt in different States against other stockholders. In such case it is probable that a judgment against one stockholder without satisfaction would be no bar to actions against others, but it is obvious that the defendants in such actions might be put to great inconvenience in ascertaining, and indeed might find it practicably impossible to ascertain, what steps the plaintiff might have taken against other stockholders in other States. A dishonest creditor might possibly recover several times over against different stockholders in different States, before they respectively could ascertain the facts. Likewise the defendant, if compelled to pay under a judgment recovered in one State, would find it difficult, if not impossible, to enforce contribution from other stockholders residing elsewhere. Moreover, if the plaintiff might maintain such actions against the defendant and against other stockholders in different States, until he should finally recover satisfaction, other creditors of the Kansas corporation might also do the same. If every creditor of a Kansas corporation, which has no property with which to respond to a judgment obtained by such creditor against it in Kansas, may therefore, without any further proceedings in that State to charge the stockholders, maintain

an action against every stockholder in every State of the Union where service can be obtained, and pursue such action until satisfaction is obtained from some stockholder in some State, it is obvious that a large amount of litigation might ensue, under which substantial justice, as among the stockholders, could not be worked out. The liability of the stockholder, as set forth in the declaration, is not a general liability for all the debts of the corporation. The execution against the stockholder which can be issued in Kansas in the action against the corporation, as set forth in the declaration, is only "to an extent equal in amount to the amount of stock by him or her owned, together with any amount unpaid thereon." Probably, by the true construction of the statute, the action at law to charge stockholders, which is given as an alternative remedy, would be limited to a like amount as the execution; though, according to the averment of the declaration, the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment, without any other limitation being expressed. The present plaintiff does not contend that it can recover against the defendant the full amount of its judgment, but only the par value of the defendant's stock in the bank. The liability sought to be enforced is a strictly limited one. It seems to us that a *bona fide*, or at any rate a compulsory, payment to one creditor would discharge a stockholder to that extent from liability to others; and a payment of the full par value of his stock would, according to the view which has been expressed by this court be a full discharge. Halsey v. McLean, 12 Allen, 442, though as to this other courts might hold otherwise; Fowler v. Robinson, 31 Me. 189; Grose v. Hilt, 36 Me. 22. There is no averment in the declaration that the defendant has not thus been discharged from liability, and perhaps this is not necessary, as it would be more properly a matter of defense. But in case of several actions in different States, questions of priority of the claims of creditors might arise upon which the decisions of the courts of the different States might not be uniform, and thus the defendant might be held liable more than once, and even a compulsory payment might not avail to protect him, as is shown by the cases cited by the defendant. Moreover, the defendant might, by way of set-off, present claims which he holds either against the corporation in Kansas, or against the creditor who sues him, and different decisions in respect to his right of set-off might be made in different States. These considerations are suggested to illustrate the practical difficulty of enforcing a liability such as that set forth in the declaration, in other States than that where the corporation is established, in such a way as to secure substantial justice. This difficulty is far greater in cases where no steps have been taken in the State where the corporation is established, to ascertain and determine the amount of each stockholder's liability. There the whole amount of debts can be ascertained, and the proper proportion assessed upon each stockholder; or his liability can be otherwise determined in a manner which will avoid many of the objections which exist against the maintenance of actions like the present. We remain satisfied with the conclusions heretofore reached by this court, that such an action, under the circumstances which appear here, ought not to be entertained in this State.

PRINCIPAL AND SURETY — BANK CLERK'S BOND—DEFALCATION.—In Garnett v. Farmer's Nat. Bank, 16 S. W. Rep. 709, decided by the court of appeals of Kentucky which was an action against the sureties on the bond of a bank clerk, conditioned for the faithful performance of his duties as such, it appeared that the clerk made false entries in his individual deposit account kept by him as clerk, by which he defrauded the bank to a large amount, and also, while acting temporarily as cashier, converted to his own use other sums. It was held that the sureties were only liable for the amount fraudulently obtained by him while acting as clerk. Lewis, J. says:

In Morse on Banking (section 17) it is said that on principle it would seem clear—*First*. That, if loss to a bank is caused by the employment of an officer out of his sphere, the surety is not liable; and to this the cases agree. *Second*. That if it can be clearly shown that the extra duties had nothing to do with the loss, but that it was caused by the officer's conduct in the sphere of his own office, or by a wrongful advantage of the opportunities afforded by that office, the surety should be held; for it is a loss within the bond, unless there be an express provision that such duties shall avoid it. It is, however, stated by the author that the cases do not assent to the second proposition if the duties are of a higher grade than those of the bonded office. But the reason for that exception does not exist, and consequently it should not be applied, where it is made clearly to appear that the loss was caused alone by the non performance or wrongful performance by the officer of the proper and regular duties of his own office; for in such case it cannot be said to have resulted from greater temptation being put in his way, or greater facilities being afforded to do the particular wrong, than were contemplated and provided for in the bond. It is true, the surety has a right to judge of the circumstances and conditions in which he is willing to be liable, and cannot be made so beyond express terms of his bond; but where, as in this case, the clerk is enabled, by simply erasing and changing figures in books of which he has exclusive charge, to not only perpetrate, but conceal from the other officers, a fraud, we do not see how the loss to the bank thereby caused can be connected with, or fairly made a sequence of, his performance of the duties of cashier during the occasional and temporary absence of that officer. In Bank v. Traube, 75 Mo. 199, a case like this it was said: "It is clear that the sureties could not be held for any defalcation of Rodell as teller, and it may be they should not be held liable for any false entries made by him in order to conceal such defalcation, as they might be regarded as having been indirectly occasioned by the action of the bank in appointing him teller; but when the omission of Rodell to perform his duty as book-keeper is wholly disconnected from any improper act on his part as teller, and was not superinduced by his appointment as teller, we do not see why the sureties should not be held liable therefor." In our opinion the evidence clearly shows that King, without any other opportunity or means than such as his office of clerk afforded, and while acting entirely within the sphere of that office, fraudulently converted the sum of $3,622.92, and the express terms and conditions of the bond being thereby and thus violated, without contributing fault of the bank, his sureties are liable therefor. But we think it is just as clear they are not liable for the other sum, $1,000.

ASSIGNMENT FOR BENEFIT OF CREDITORS—PREFERENCES.—Berger v. Varrelman, 27 N. E. Rep. 2065, decided by the court of appeals of New York is of interest on the subject of preferences, recalling the same question which came before the United States Supreme Court in White v. Cotzhausen involving the validity of a preference contemporaneous with but outside the instrument of assignment in this case. Immediately before making a general assignment for the benefit of creditors, the assignors confessed a judgment in favor of the father of one of them, they and he knowing that the amount of such judgment was more than one-third of the assets of the firm. It was held that a judgment setting aside such confession, as made in contemplation of the assignment and as part thereof, for the purpose of unduly preferring the creditor, contrary to Laws N. Y. 1887, ch. 503, which restricts such preferences to "one-third in value of the assigned estate," should be sustained, although there was no finding of fact that, when the debtors confessed the judgment, they contemplated making the assignment, but such conclusion was embraced as a finding of law. Such judgment is not rendered valid, in whole or in part, by the fact that the creditor had no knowledge that the debtor contemplated making an assignment. Though the terms of the act provide that "in all general assignments" such preferences are invalid, they are none the less invalid because made by a separate instrument, where they are made in contemplation of the assignment. Upon the last point the court says:

> The question has several times arisen whether preferences created, not in a voluntary assignment, but by instruments executed at about the same time, and in contemplation of making a general assignment, were within the statute. In Preston v. Spaulding, 120 Ill. 208, 10 N. E. Rep. 903, the insolvents preferred certain of their creditors by confessing judgments, and on the same day that their general assignment for the benefit of creditors was made. The point was taken that the statute made void only preferences in the general assignment, and not those otherwise given. In discussing this question it was said: "We hold that it is within the spirit and intent of the statute that, when a debtor has formed a determination to voluntarily dispose of his whole estate, and has entered upon that determination, it is immaterial into how many parts the performance or execution of his determination may be broken; the law will regard all his acts, having for their object and effect the disposition of his estate, as parts of a single transaction, and on the execution of a formal assignment will, under the statute, draw to it, and the law will regard as embraced within its provisions, all prior acts of the debtor having for their object and purpose the voluntary transfer or disposition of his estate to or for creditors; and that, any preference so shown to have been made or given by the debtor to one creditor over another in such disposition of his estate, full effect will be given to the assignment, and such preference will, in a court of equity, be declared void, and set aside as in fraud of the statute." This doctrine has been approved in subsequent cases in that State, and also in the Supreme Court of the United States in White v. Cotzhausen, 122 U. S. 329, 9 Sup. Ct. Rep. 309, which arose under the Illinois statute. In that case an insolvent debtor, by deeds, bills of sale and warrants for the confession of judgments, disposed of all his property for the benefit of his brothers and sisters, who were creditors, but made no general assignment. In an action brought in the Circuit Court of the United States to set aside the conveyances as violations of the thirteenth section of the voluntary assignment act, it was held that it was quite immaterial that no general assignment had been executed, but that any preference, however created, by an insolvent while engaged in making a complete disposition of his property, was forbidden and void under the act. The judgment of the circuit court was placed in part upon the ground that the conveyances and confessions of judgment "were made without adequate consideration, and with intent to hinder, delay and defraud the appellee Cotzhausen" (page 333, 129 U. S., and page 310, 9 Sup. Ct. Rep.), the complaining creditor, but the judgment of the supreme court was not rested upon that ground. It was said: "We have already seen that the circuit court proceeded upon the ground that the conveyances, bill of sale, confession of judgment and transfers by Alex. White, Jr., were made without consideration, and with intent to hinder, delay and defraud the appellee. Upon these grounds it gave him a prior right in the disposition of the property. We are not able to assent to this determination of the rights of the parties; for the mother, sisters and brothers of Alex. White, Jr., were his creditors, and, so far as the record discloses, they only sought to obtain a preference over other creditors." Page 344, 129 U. S., and page 313, 9 Sup. Ct. Rep. The reference to White v. Cotzhausen must not be taken as an indication of approval, nor this cautionary remark as an intimation that we disapprove of the doctrine that, when an insolvent, without making a general assignment, transfers his entire estate to favored creditors by several instruments, it is a violation of the section, but the case is instructive in its reasoning, and shows the trend of courts when called upon to consider like statutes. In this State the supreme court (Stein v. Levy, 8 N. Y. Supp. 505), one judge dissenting, has declined to follow the doctrine of the case cited to its logical conclusion. In Pennsylvania it has been held (Banking Co. v. Fuller, 110 Pa. St. 156, 1 Atl. Rep. 731) that a confession of judgment to a *bona fide* creditor by an insolvent, on the eve of making a general assignment for the benefit of creditors, is not a violation of the statute which forbids preferences in assignments; but in most of the States the construction which we have indicated prevails.

LIBEL—INDORSEMENT ON ENVELOPE—"BAD DEBT COLLECTION AGENCY."—The Supreme Court of Missouri, in State v. Armstrong, 16 S. W. Rep., hold that it is a libel to send through the mail an envelope having indorsed

thereon, in large letters, "Bad Debt Collecting Agency." Having employed the agency with knowledge of its methods, and having refused to stop its proceedings after having reason to believe that it was sending these envelopes to the prosecuting witness, the accused is responsible for the acts of the agency. Evidence that the prosecuting witness owed a few small bills is not competent for the defense. Gantt, P. J., says:

This information is drawn under section 3869, Rev. St. 1889, (section 1591, Rev. St. 1879), which defines a libel as follows: "A libel is the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy tending to provoke him to wrath, or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation, made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives and friends." Was the sending of this envelope with these indorsements on it the publishing of a libel, tending to provoke the prosecutrix to contempt or ridicule, and bring her in disrepute with her employers and the public? We are clearly of the opinion that it was. The words "Bad Debt Collecting Agency" were printed in large, bold type on the envelopes, and were obviously intended to attract the attention of the public? The words must be construed in the light of the times in which they are used. Similar associations had sprung up all over the country, and these devices were resorted to to force debtors to pay their debts. To such extent did they go that the congress of the United States forbade the use of the mails for their distribution. They had become so common that they were thoroughly understood in the mercantile world. Under this state of affairs, the defendant resorts to this Chicago agency to collect this debt of the prosecutrix. He sets in motion this machine for extorting this money from her. It was known that the prosecutrix was earning her living by her work in the large and responsible dry goods house of Scruggs, Vandervoort & Barney. Accordingly, these letters, four in number, are directed to her in the care of her employers. All the mail for the employees of this large house was put together and taken by the carriers to the store. There the various clerks went to a common repository for their mail. So that the scheme was well devised to attract the attention of those with whom she was most intimately connected, and without whose respect and good opinion the life of a sensitive woman would soon become a burden and unendurable. This envelope on its face was designed to attract the attention of the public, and when the prosecutrix received these letters in these envelopes the fact was thereby published that this association was in correspondence with her for the purpose of collecting a bad debt; and we cannot shut our eyes to the necessary implication that she was a bad debtor; that she was not in the habit of paying her honest debts; and was unworthy of credit. Nor are we left in doubt that this was the purpose of the association. In the letter which came under cover of this envelope the agency asks her: "Can you afford to have the public know that you refuse to pay this bill? You may need credit again some time, but as long as this account remains in this unsatisfactory manner it will be hard for you to obtain it." In other words: "By means of this style of publishing you to the world we will advertise you as unworthy of credit." Nor was this all. She is warned: "Should you positively refuse to make any arrangements for a liquidation of this claim, we feel justified in advertising the same for sale in the newspapers, as well as to send you a statement regularly until the matter is settled." These regular communications, if sent without these libelous words in large type, would not attract any attention; but, received regularly in this form, would give a painful publicity. The evident purpose and design of the defendant and the association he employed, and for whose acts he is responsible in this matter, was to publish the prosecutrix as a bad debtor, a dishonest person, who would not pay her honest debts, and to degrade her in the eyes of the public and her employers, and as such was clearly libelous, and within the meaning of the statute. Muetze v. Tuteur (Wis.), 46 N. W. Rep. 123; Dennis v. Johnson (Minn.), 44 N. W. Rep. 68; Johnson v. Com. (Pa.), 14 Atl. Rep. 425. The law will not countenance or tolerate this method of collecting a debt. The facts that the debt was originally only $3.45; that it was barred by the statute of limitations; that defendant persisted in his endeavor to extort the money from the prosecutrix after her protest; and the avowed intention of his agents to publish her to the world, and advertise this account for sale in the newspapers, amply sustain the charge that this was maliciously done. To permit a defenseless woman in this day of enlightenment to be thus persecuted would be a reproach to our laws. Beals v. Thompson (Mass.), 21 N. E. Rep. 959.

LIABILITY OF WIFE FOR FAMILY EXPENSES.

Many of the States have passed laws making family expenses chargeable upon the property of the husband or wife, or both. The statute generally declares that the expenses of the family, and of the education of the children shall be chargeable upon the property of both husband and wife, or of either of them, in favor of the creditors, are in relation thereto, they may be sued jointly or separately.[1]

The State of Iowa was one of the first to enact this law, which declares that the expenses of the family, the education of the children, and such other obligations as come within the equity of the provisions, are chargeable upon the property of both husband and wife, or either of them, and in relation thereto, they may be sued jointly, or separately. This law is a radical change from the common-law rule that a married woman could not contract. This statute is enacted on the principle that the expenses of the family, and

[1] Rev. Stat. Ill., ch. 68, § 15, adopted from the Iowa Code of 1873, § 2214.

the education of the children should, to the extent of their property, be met by both; so their property is chargeable for family expenses. Not that the wife is liable generally, though the husband is, but that the property is liable.

In the absence of fraud and collusion between the creditor and the husband, or some other circumstances giving to the wife peculiar equities, those debts are binding on both husband and wife, to the extent of their property, thus making his acts, agreements and promises in this regard, alike obligatory upon both of them. The fact that the form of the debt is changed from an account to a note of the husband does not make any difference as to the wife's liability, unless the creditor makes an agreement that the husband's note is taken as a payment of the account. This law does not take away the right of the husband to be at the head of the family, and to manage his affairs to the best of his judgment and discretion. The wife, as a general rule, must be controlled by his contracts in this regard; so the merchant need not wait for the consent of the wife before he sells the husband articles for the support of the family. She is entitled to whatever advantage he may obtain from the creditor in the payment of the debt, and must as a general rule be held to the same remedies and defenses.[2] It is indicated in this case that if the wife has no property, and it is so shown at the trial, no judgment can be rendered against her. The court says: "And here we remark that the petition seeks a general judgment against the wife. Nor is it suggested that there is nothing to show that she has property upon which this debt should be charged." This decision implies that if the wife has no property, no judgment can be rendered against her.

In order to charge the property of both husband and wife, the articles must not only have been bought for the family use, but actually used in the family.[3] But when one advances money to the husband, which is used for the payment of family expenses, he cannot claim a lien upon the separate property of the wife therefor, where such advances were not made at her request, and there is no assignment of the original account for such expenses.[4] A wife is personally liable with her husband for the expenses of the family, and a personal judgment may be rendered against her in a joint action against her and her husband, notwithstanding the husband may have been discharged in bankruptcy.[5] So the change in the form of the indebtedness by giving a note by the husband does not release the wife. Nor is the remedy against tinguished by the assignment of the note.[6] Giving such a note is not payment of the debt.[7]

It will be noticed that the statute does not say necessary expenses of the family. So the law does not limit the liability of the property of the wife to expenditures for necessary family expenses. It applies to the expenses of the family without limitation or qualification as to kind or amount. What is necessary depends very much upon the wealth, habits and social position of the party. What is a family expense depends upon none of these conditions. Hence, the separate property of the wife is liable for the price agreed to be paid for a piano for the use of the family.[8] So a cook-stove and fixtures, when purchased for that use and used at the house, properly come within the meaning of the statute, as clothing, fuel or medicine.[9] The only criterion which the statute furnishes is, was the expenditure a family expense, was it incurred for, on account of, and to be used in the family.

The Illinois decision is not so broad as those of Iowa. It is held in Illinois that the words "expenses of the family" mean such expenses as were incurred for, on account of and to be used in the family, and as to what would be included in the term must, within the above limitation, be determined by the circumstances of each case.[10] This decision is qualified by terms not found in the Iowa decisions, though it cites the Iowa doctrine.[11] But the article must be used in the family. Provisions and clothing come under expenses of the family.[12] But a reaping machine, al-

[2] Lawrence v. Sinnamon, 24 Iowa, 80.
[3] Fitzgerald v. McCarty, 55 Iowa, 702.
[4] Sherman v. King, 51 Iowa, 182; Davis v. Ritchey, 55 Iowa, 719.
[5] Jones v. Glass, 48 Iowa, 345.
[6] Black v. Sippy, 15 Oreg. 574.
[7] Watkins v. Mason, 11 Oreg. 72.
[8] Smedley v. Felt, 41 Iowa, 588.
[9] Finn v. Rose, 12 Iowa, 565.
[10] Von Platen v. Krueger, 11 Ill. App. 627.
[11] See Smedley v. Felt, 41 Iowa, 588.
[12] Hawks v. Urban, 18 Iowa, 83.

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though it might assist the husband in supporting his family, is not a family expense.[13] In this case the court says: "The expenses of a family are something quite different from whatever may contribute, either remotely or directly, to the support of the family. The merchant purchases goods on credit, and, by selling them at a profit, supports his family; or a farmer purchases cattle on credit, and, by selling them at a profit, contributes to the comfort and support of his family. But the indebtedness so contracted does not, we think, become a family expense." So a breaking plow is not a family expense.[14] Attorney's fees and interest are not family expenses.[15] So the expenses incurred in the treatment of an insane wife in a hospital for the insane is not a family expense, within the meaning of the statute.[16]

The Illinois court says that this language is too broad: "Expenses for the comfort, convenience and welfare of the family." Because, "many expenditures may contribute, directly or indirectly, to the comfort, convenience and welfare of a family, which, in no proper sense can be denominated family expenses. All successful business enterprises of the husband may, and usually do, contribute, both directly and indirectly, to the comfort, convenience and welfare of the family. He thereby obtains the means of supporting them and defraying their expenses. It cannot, however, be said that expenditures in the pursuit of such business enterprises are therefore family expenses."[17]

The cost of an organ, though purchased by the husband for resale, but never actually sold by him, but for some years used in his family, as organs are ordinarily used, is a family expense, for which the property of the wife is chargeable. Where the husband gives his individual note for goods purchased and used as family expenses, the cause of action against the wife is not barred until the cause of action upon the note would be barred as against the husband, and this is so when the note has been put in judgment against the husband.[20]

In Alabama all property belonging to the wife's statutory estate is liable for the payment of necessary family expenses,[21] whether held by legal or equitable title.[22] In Mississippi, under the code, the separate estate of a married woman is liable for family supplies and necessaries, but it is essential that her consent should be shown.[24] In North Carolina the wife's separate estate is liable "for her necessary personal expenses or the support of the family."[25] But her separate estate is not liable for goods supplied to enable her to keep a boarding-house, because this is not within the meaning of the code, though the family be supported from the profits of the business.[26]

At common law a married woman cannot bind herself personally, and hence, her contract will not be enforced against her *in personam*, but equity will so far recognize it as to make it bind her separate estate, and will proceed *in rem* against it; such estate being regarded as a sort of artificial person created by the courts of equity, is the debtor and liable to her engagement.[27] Lord Thurlow declared that he knew of no instance in which a contract of a *feme covert* had been held to warrant a personal decree against her, and that the only result of an action against her could be "to fetch forth her separate property and make it liable to her engagements."[28] At law a married woman cannot bind herself personally, and a court of equity has no power to enforce a contract against her *in personam;* but if she has separate property, the court may proceed *in rem* against it.[29] And it is a fallacy to suppose that a married woman is a debtor at law, because she is liable to have proceedings taken against her to obtain satisfaction of a debt out of her separate estate; for that, "it is not the woman, as a woman, who becomes the debtor, but her engagement has made her property, which

[13] McCormick v. Muth, 49 Iowa, 536.
[14] Russell v. Long, 52 Iowa, 250.
[15] Fitzgerald v. McCarty, 55 Iowa, 702.
[16] County v. McDonald, 46 Iowa, 170.
[17] Von Platen v. Krueger, 17 Ill. App. 627, 631.
[18] Frost v. Parker, 65 Iowa, 178.
[19] Waggoner v. Turner, 69 Iowa, 127; Phillips v. Kirby, 73 Iowa, 278.
[20] Frost v. Parker, 65 Iowa, 178; Phillips v. Kirby, 73 Iowa, 278.
[21] Code, §§ 2711, 2712.
[22] Jordan v. Smith, 83 Ala. 299.
[23] Code of 1871, § 1780.
[24] Cook v. Ligon, 54 Miss. 368; Grubbs v. Collins, 54 Miss. 485.
[25] Code, § 1826.
[26] Clark v. Hay, 98 N. C. 421.
[27] Pollock on Cont. 69.
[28] Hulme v. Tenant, 1 Brown C. C. 16.
[29] Story's Eq. Jur. § 1397.

it is settled to her separate use, a debtor, and liable to satisfy the engagement."[30] It is necessary, in order to establish a right to a special judgment against her estate, that the complainant should show, not only that she has such estate, but that the obligations are such as come within the statute.[31]

The mandate of the statute that execution shall issue against her, for the collection of the amount of the judgment from her separate property, presupposes that all these requisites appear of record, and that the existence of such separate property is fixed by the judgment. When the judgment is alone against the husband, the wife's property may be taken without a personal judgment against her. This is because the statute declares her liability and a right is created, but no remedy is pointed out. The right declared is that the creditor of the husband or wife, for family expenses, may have a remedy against both. "The liability created is that both shall be liable for family expenses. The remedy to enforce the provision is not pointed out, further than that the indebtedness contemplated by the provision may be 'chargeable upon the property of both husband and wife,'"[32] and under this provision each is personally liable.[33]

But under this provision the remedy is not limited to a personal judgment against the wife, and by proper proceedings in equity the property of the wife may be pursued without the claim for a personal judgment against her. No prejudice can result to the wife by seeking to enforce the debt against her property without asking a personal judgment against her. The statute, in declaring that her property shall be charged, clearly implies that a remedy against it, is contemplated, which may be a proceeding without a personal judgment against the wife.[34] And though the husband gave his individual note for the commodity which was used in the family, which was put in judgment against him alone, and the judgment assigned to a third party, the assignee was entitled, upon a showing of the facts, in a proper proceeding, to have the wife's property subjected to the payment of the judgment.[35] Judge Beck says: "The action cannot be defeated on the ground that no assignment of the claim against the wife is shown. The wife was not a party to the original contract, nor to the note. She was not a party to the action whereon the judgment was rendered. The evidence of the debt was changed from an oral contract to a note, and from the note to the judgment. The debt all the time continued the same. This debt was continually enforceable against the wife's property. Her liability followed the debt. An assignment of the claim as against her, therefore, is not necessary to authorize plaintiff to bring this action. This liability of the wife continues as long as a right of action exists against the husband. He may change the form of the evidence of the debt, so that the statute of limitations will not bar recovery; the debt, enforceable at law, continues, and with it the wife's liability.[36]

The Missouri statute declares that the separate property of the wife shall be subject to execution for any debt or liability of her husband created for necessaries for the wife or family.[37] But under this provision a wife's separate property cannot be seized on execution under judgment against the husband alone, even though the judgment was for necessaries.[38] In delivering this opinion, Judge Macfarlane says that in the States of Iowa, Illinois, Alabama, Pennsylvania and Mississippi are statutes similar to the one under consideration. If the learned judge will investigate closely he will find that the statutes of Iowa, Illinois and Oregon are identical, but are not similar to the Missouri statute, in that the Missouri statute declares that an "execution" may issue and be levied upon her property "for any debt or liability of her husband created for necessaries for the wife or family." Of course an "execution" in civil actions, is the mode of obtaining the debt recovered by a judgment. So, under this statute there must be a judgment before any execution can issue against the wife's sepa-

[30] *In re* Grissell, L. R. Ch. Div. 484.
[31] Dougherty v. Sprinkle, 88 N. C. 300, 304.
[32] Frost v. Parker, 65 Iowa, 178, 182.
[33] Smedley v. Felt, 41 Iowa, 588; Lawrence v. Sinnamon, 24 Iowa, 80; Finn v. Rose, 12 Iowa, 565; Jones v. Glass, 48 Iowa, 345; Farrer v. Emery, 52 Iowa, 725; Frost v. Parker, 65 Iowa, 178; Black v. Sippy, 15 Oreg. 574; Watkins v. Mason, 11 Oreg. 72.
[34] Frost v. Parker, 65 Iowa, 178, 182; Black v. Sippy, 5 Oreg. 574.
[35] Frost v. Parker, 65 Iowa, 178, 182. See also Lawrence v. Sinnamon, 24 Iowa, 80.
[36] Lawrence v. Sinnamon, 24 Iowa, 80.
[37] Rev. Stat. 1879, § 3296.
[38] Bedsworth v. Bowman (Mo.), 15 S. W. Rep. 990.

rate estate, and a judgment against the husband would not be sufficient.

In the Iowa case,[39] the court held no prejudice will result to the wife by seeking to enforce in equity the debt against her property without asking a personal judgment against her. And so certain of the wife's lands were subject to a judgment against the husband.

The Missouri court further says: "Though many cases involving the construction of the statutes have been reported, none has been found in which an attempt was made to charge the wife or her property without making her a party, and giving her an opportunity to be heard. This argues that the wife is, by the courts of those States, regarded as a necessary party to a suit in which her property rights are involved. In Pennsylvania and Alabama the courts have repeatedly decided that both the pleadings and the evidence must show a case of the wife's liability under the statute."[40] The court holds that the estate created by statute was intended to constitute a legal estate; that this statutory estate of the wife is not of the same character as was the equitable separate estate at common law, which could only be charged by a decree in equity. For the purpose of charging the wife's separate estate for a debt created for necessaries, a judgment at law would be binding upon the owner, and the property be subject to levy and sale under execution to satisfy such judgment, the same as that of an unmarried woman. The Missouri law as interpreted, requires a personal judgment against the wife before her property can be seized for the debts of the husband made in support of her or the family. This undoubtedly would be, or is the rule in Pennsylvania, Alabama, North Carolina and Mississippi. In Iowa a wife's property can be made subject to a judgment against the husband for family expenses, and when no personal judgment has been taken against the wife, but there is a judgment against the husband, the judgment creditor may go into chancery to subject the wife's property to the satisfaction of the debt. Probably the Illinois and the Oregon courts would hold the same doctrine. D. H. PINGREY.

[39] Frost v. Parker, 65 Iowa, 178, 182.

[40] Citing Childress v. Mann, 33 Ala. 207; Sawtelle's Appeal, 84 Pa. St. 310; Hoff v. Koerper, 103 Pa. St. 396.

STARE DECISIS — MORTGAGE OF SEPARATE ESTATE.

FARRIOR V. NEW ENGLAND MORTGAGE SECURITY CO.

Supreme Court of Alabama, June 23, 1891.

Where, at the time of the execution of a mortgage of her statutory separate estate by a married woman, she was authorized to do so, under judicial constructions of the statute by the supreme court, the validity of the mortgage will not be affected by the subsequent overruling of those decisions.

COLEMAN, J.: Many of the questions raised by the pleadings in this case have been considered and adjudicated in recent decisions of this court. Security Co. v. Ingram, 9 South. Rep. 140; Nelms v. Mortgage Co., *Id.* 141; Mortgage Co. v. Sewell, *Id.* 143. The one question of supreme importance presented for review in this record did not arise in either of the foregoing cases cited. On or about May 1, 1883, in order to procure a loan from the New England Mortgage Security Co., J. S. Farrior and his wife, Minnie E. Farrior, executed a promissory note to the company, and secured the same by mortgage on certain lands in Lowndes county, Ala. By deed of conveyance executed by J. S. Farrior to his wife on the 3d of October, 1882, a part of these lands were conveyed to her to pay and satisfy an indebtedness of the husband to the wife. The consideration of this deed is stated to be for "two thousand and seven dollars, the amount of money and property used and converted of the *corpus* of the separate estate of the wife." At the time the note and mortgage was made to secure the loan, the wife had no legal capacity to bind her statutory estate by mortgage or other contract, but she could bind her equitable separate estate as if she were a *feme sole*. By repeated decisions of this court, in reference to the married woman's law creating in the wife a statutory separate estate, it was held that a conveyance of lands from the husband to the wife vested in the wife an equitable separate estate; and this was the effect of such conveyance, notwithstanding the consideration was property the *corpus* of her statutory estate, or indebtedness of the husband on account of money, the *corpus* of her statutory estate, used and converted by him. These decisions of the supreme court of this State, thus construing the statute, and declaring the character of the estate conveyed to the wife, and her capacity to incumber it by contract, were in force at the time the note and mortgage involved in the present case were executed. Turner v. Kelly, 70 Ala. 85; Goodlett v. Hansell, 66 Ala. 161; McMillan v. Peacock, 57 Ala. 129. Subsequent to this time, but before the filing of complainant's bill, the supreme court of the State overruled these authorities, and held that "by no contract between the husband and wife can her statutory separate estate be converted into an equitable estate, with power in the wife to charge it," and

expressly and "intentionally" overruled the former decisions which hold to the contrary. Loeb v. McCullough, 78 Ala. 533; Jordan v. Smith, 83 Ala. 302, 3 South. Rep. 703; Parker v. Marks, 82 Ala. 548, 3 South. Rep. 5. The reasons *pro* and *con*, upon which the different decisions rest, need not be here reconsidered. The court adheres to the later decisions, and reaffirms the rule of law declared in Loeb v. McCullough, and quoted *supra*.

The question presented for consideration is the effect of the later decision upon contracts and rights of property acquired under the statute, as construed by the former decisions, and while those decisions were in force. It has been repeatedly declared in repeated decisions by the highest tribunal in this country, and many eminent jurists, that a fixed and received construction of a statute made by the supreme court of the State makes a part of such statute law. Green v. Neal, 6 Pet. 297; Shelby v. Guy, 11 Wheat. 368. In the case of Insurance Co. v. Debolt, 16 How. 432, Taney, C. J., held "that the sound and true rule was that, if the contract when made was valid by the laws of the State, as then expounded by all the departments of its government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent act of the legislature or decisions of its courts altering the construction of the law." In the case of Taylor v. Ypsilanti, 105 U. S. 72, this authority was reaffirmed, and also the case of Douglass v. County of Pike, reported in 101 U. S. Rep. 677, in which it was held that "the true rule is to give a change of judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decisions is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment." The following authorities hold the same rule: Olcott v. Supervisors, 16 Wall. 689; Fairfield v. County of Gallatin, 100 U. S. 52; Supervisors v. U. S., 18 Wall. 71; Gelpcke v. City of Dubuque, 1 Wall. 206. Sutherland on Statutory Construction (section 319), says: "A judicial construction of a statute becomes a part of it, and as to rights which accrue afterwards it should be adhered to for the protection of these rights. To divest them by a change of the construction is to legislate retroactively. The constitutional barrier to legislation impairing the obligation of contracts applies also to decisions altering the law as previously expounded so as to affect the obligations of existing contracts made on the faith of the earlier adjudications." In the case of Geddes v. Brown, 5 Phila. 180, the facts were that in the year 1848 the legislature passed a law enlarging the power of married women over their property, and enabling them to deal with it in many respects as if they were single. The supreme court of the State declared that under this law a married woman might convey or incumber property settled to her separate use. On the faith of this case the mortgagee took his mortgage. By a subsequent decision of the supreme court the former decision was overruled, and it was held that property settled to the separate use of a married woman could not be alienated unless the power was conferred by the deed. The decision of the court in Geddes v. Brown was (and it is only the conclusion of the court that we cite) that a party who acts in accordance with the law as laid down by the highest tribunal in the State, while it is still law, shall not suffer because it is subsequently set aside, and another and inconsistent rule substituted for it. The validity of the mortgage was upheld in the case cited. Endlich, on the Interpretation of Statutes, (section 363), holds that a "judicial interpretation of a statute becomes a part of the statute law, and a change of it is in practical effect, the same as a change of the statute. The author cites with other cases to sustain the text, the case of Geddes v. Brown, *supra*.

It is contended that the reverse of these principles have been recognized, if not fairly held, in this State, and we have been referred to the case of Prince v. Prince, 67 Ala. 565, and Boyd v. State, 53 Ala. 608. In the first case the contention was that, as the statute had not been construed when the mortgage which gave rise to the litigation was executed, the grave doubt among members of the legal profession "as to the proper construction of the statute was a sufficient consideration to uphold a compromise of the mortgage debt." The court held that every one was required to know the proper construction of the statute, applying the maxim, *ignorantia facti excusat, ignorantia juris non excusat*. The question was not before the court in that case. In the latter case (Boyd v. State, 53 Ala. 615) the present chief justice rendered the opinion, and on an application for a rehearing expressly called attention to the fact that a different principle controlled the conclusion of the court in the Boyd Case from that held in the authorities referred to in this opinion, and declared that "in none of them was it decided or contended that any right existed or could be maintained which rested alone on a statute which the court pronounced unconstitutional." This case was affirmed by the Supreme Court of the United States (94 U. S. 648), in which it was held that "the constitutionality of the act was not drawn in question" by the previous decisions of the State court so as to necessitate a decision of that question. The case of Bibb v. Bibb, 79 Ala. 444, though limiting the principle in its application to the subject-matter of the particular litigation, clearly recognized the right of parties acquired under decisions of the supreme court in the following pertinent language: "The quieting

of litigation; the public peace and repose; respect for judicial administration of the law, and confidence in its reasonable certainty, stability, and consistency: and all considerations of public policy—call for permanently upholding acts done, contracts executed, rights vested, and titles to property acquired on the faith of decisions of the court of last resort." Persons contracting are presumed to know the existing law, but neither they nor their legal advisers are expected to know the law better than the courts, or to know what the law will be at some future day. Any principle or rule which deprives a person of property acquired by him, or the benefit of a contract entered into, in reliance upon and strict compliance with the law in all respects as interpreted and promulgated by the court of last resort at the time of the transaction, and no fault can be imputed to him unless it be held a fault not to forsee and provide against future alterations in the construction of the law, must be radically wrong. Such a principle or rule of law would clog business transactions, unsettle titles, and destroy all confidence in the decisions of the supreme court of the State. We hold the doctrine to be sound and firmly established by the decisions of the Supreme Court of the United States, and enunciated by many eminent text-writers, that rights to property, and the benefits of investments acquired by contract, in reliance upon a statute as construed by the supreme court of the State, and which were valid contracts, under the statute as thus interpreted, when the contracts or investments were made, cannot be annulled or divested by subsequent decisions of the same court overruling the former decisions; that as to such contracts or investments it will be held that the decisions which were in force when the contracts were made had established a rule of property upon which the parties had a right to rely, and that subsequent decisions cannot retroact so as to impair rights acquired in good faith under a statute as construed by the former decisions. The application of these principles lead to an affirmance of the decision of the lower court. Affirmed.

NOTE.—The maxim *stare decisis et quieta non movere* is the basis of the stability and certainty of the law. The recognition of this rule is essential in any system of jurisprudence founded on precedent. "The court almost always, in deciding any question, creates a moral power above itself." Bates v. Relyea, 23 Wend. 341. To overrule established precedents that have become recognized rules of property and the basis of contract relations, would unsettle titles, disturb business transactions and introduce an element of uncertainty into the administration of justice, from which the public would suffer grave inconvenience. "There are some questions of law the final settlement of which is vastly more important than how they are settled." Rockhill v. Nelson, 24 Ind. 422.

To cite all the cases in which the maxim is recognized and enforced would be an endless and useless task. Every decision which is based on precedent is at least a tacit application of it. It is interesting, however, in connection with the principal case, to note the limitations of the rule and some of its most striking applications.

The correction of errors which have crept into the adjudications and the establishment of correct principles is an object of scarcely less importance than that stability and certainty in the rules of property which it is the purpose of the rule *stare decisis* to insure. Therefore the maxim applies in its full force only to those cases which, from their nature, establish rules of property and form the basis for future contracts and business relations. Rogers v. Goodwin, 2 Mass. 475; Day v. Munson, 14 Ohio St. 488; Farmer's Heirs v. Fletcher, 11 La. Ann. 142; Aicard v. Daly, 7 La. Ann. 612; Van Loon v. Lyon, 4 Daly, 154; Pioche v. Paul, 22 Cal. 110; Van Winkle v. Constantine, 10 N. Y. 422; Fisher v. Horican I. & M. Co., 10 Wis. 351; Reed v. Ownby, 44 Mo. 204; Hihn v. Courtis, 31 Cal. 398; Davidson v. Allen, 36 Miss. 419; Frank v. Evansville, etc. R. Co., 12 N. E. Rep. 105, 111 Ind. 132; Wilson v. Perry, 1 S. E. Rep. 302, 29 W. Va. 169; Pyles v. Riverside Furniture Co., 2 S. E. Rep. 909, 30 W. Va. 123; Pond v. Irwin, 15 N. E. Rep. 272, 113 Ind. 243; Paulson v. Portland, 19 Pac. Rep. 450, 16 Oreg. 450; Scott v. Stewart, 11 S. E. Rep. 897.

To those cases which do not affect the validity or control the construction of contracts, or establish rules of property, the maxim has no strict application beyond that suggested by those general considerations which favor certainty and stability in the law.

Upon the doctrine of the principal case that a judicial interpretation of a statute which establishes a rule of property, becomes in effect a part of the statute, and will be protected from subsequent change by judicial decision by the rule of *stare decisis*, there seems to be absolutely no conflict in the cases. In addition to the authorities cited in the opinion, see Field's Heirs v. Goldsby, 28 Ala. 218; Matheson's Heirs v. Hearin, 29 Ala. 210; Boon v. Bowers, 30 Miss. 256; Tuttle v. Griffin, 64 Iowa, 458; Hering v. Chambers, 103 Pa. St. 172; Aicard v. Daly, 7 La. Ann. 612; New Orleans v. Poutz, 14 La. Ann. 853; *Re* Warfield, 22 Cal. 51; Panaud v. Jones, 1 Cal. 448; Rogers v. Goodwin, 2 Mass. 477; Seale v. Mitchell, 5 Cal. 401; Day v. Munson, 14 Ohio St. 488; Laurie's Succession, 6 La. Ann. 529; Sheridan v. City of Salem, 14 Oreg. 328; Commonwealth v. Miller, 5 Dana, 320; Van Loon v. Lyon, 4 Daly, 149.

It has even been held that where the judicial interpretation of the statute was *obiter*, yet if apparently concurred in by subsequent legislative action, the doctrine of *stare decisis* would apply. Commonwealth v. Miller, 5 Dana, 320.

In numerous actions on municipal bonds it has been held by the Supreme Court of the United States that rights of the holders are to be determined by the law as it was judicially construed when the bonds were put on the market as commercial paper. Green County v. Conness, 109 U. S. 104; Ralls County v. Douglass, 105 U. S. 728; Douglass v. Pike County, 101 U. S. 677, 687; Havemeyer v. Iowa County, 3 Wall. 294; Mitchell v. Burlington, 4 Wall. 270; Olcott v. Supervisors, 16 Wall. 690; Louisiana v. Pillsbury, 105 U. S. 295; Thomas v. Lee County, 3 Wall. 327; Lee County v. Rogers, 7 Wall. 181; Chicago v. Sheldon, 9 Wall. 50. See also Burleigh v. Town of Rochester, 5 Fed. Rep. 667, and the recent case of Harmon v. Auditor, 123 Ill. 135, 13 N. E. Rep. 161.

What are the ultimate limitations of the maxim, is a question not without difficulty, depending for its solution to a great extent upon the circumstances of the particular case in which it is sought to be applied.

The Mississippi court, in Boon v. Bowers, 30 Miss. 256, say that questions which have been carefully considered and solemnly settled ought not to be treated as open for future investigation, "unless it shall appear that the evil resulting from the principle established must be productive of greater mischief to the community than can possibly ensue from disregarding the previous adjudications upon the subject." And since the rule of *stare decisis* is based upon considerations of expediency, this would seem to be its natural limitation. Bowers v. Green, 1 Scam. 42; Mallett v. Butcher, 41 Ill. 383; Stevens v. Pratt, 101 Ill. 214; Greencastle So. T. Co. v. State, 28 Ind. 382.

In Linn v. Minor, 4 Nev. 462, the court overruled the previous case of Millikin v. Sloat, 1 Nev. 585, which held a State statute recognizing the validity of a special promise to pay in gold coin to be unconstitutional and void, as being in conflict with the national legal tender act. The court, while conceding that great weight must be given to the doctrine of *stare decisis*, puts its decision upon the ground that no right of property could be disturbed by the reversal of Milliken v. Sloat, nor any derangement caused in the commercial system, since the doctrine of that case had been repudiated by the moral sense of the people and commercial business had continued to be transacted on a coin basis, and the only effect of the decision had been to give a legal sanction to the violation of contracts and enable the dishonest debtor to defraud his creditor. And in Aud v. Magruder, 10 Cal. 291, the California court overruled a decision as erroneous in itself, and as establishing an innovation upon the principles of commercial law on the ground that the latter has a system of its own built up by centuries of time and the wisdom of learned jurists all over the world, and that the stability and certainty of the rules of that system are of more importance than any fancied benefits which might accrue from any innovation upon it.

Where, because of the pressure of considerations of public convenience or of other reasons, it has been held necessary to overrule decisions establishing a rule of property, it has been held, as in the principal case, that such judicial action cannot be allowed to have a retroactive effect, but that rights which have been acquired in the meantime under the doctrine as established in the overruled case will be preserved inviolate. Hardigree v. Mitchum, 51 Ala. 151; Hollinshead v. Von Glahn, 4 Minn. 190.

Whether, in cases involving the construction of the constitution and presenting for consideration the structure of the government and the limitations upon legislative and executive power, the public importance of the questions to be adjudicated will not forbid their settlement by the application of the rule of *stare decisis*, is a matter upon which there is some conflict in the cases. In Willis v. Owen, 43 Tex. 48, the court held that in such case the former decision or previous construction would be received merely as an authority tending to convince the judgment, and not as precluding inquiry as to the correctness of the rule established. See also Boyd v. State, 53 Ala. 601. But in Seale v. Mitchell, 5 Cal. 403, it was held that a prior decision that the Superior Court of San Francisco was a court of inferior jurisdiction within the meaning of the constitution, would not be disturbed, irrespective of the court's present opinion as to the merits of the question. It is, however, interesting to note that the court regards the decision in question as in a certain sense establishing a rule of property, saying that it "has remained as an exposition, by the tribunal of last resort of the character of the court in question for nearly five years. The community to be affected by it have acted upon it in a vast number of judicial relations; rights of property have grown up under it, have changed hands and passed through numerous ramifications, until it has become imperative to regard it as a rule of property which no power can disturb." See, to the same effect, Boon v. Bowers, 30 Miss. 246; Fisher v. Horicon Iron Co., 10 Wis. 352. From these cases it would seem that the real test, whether or not the maxim is to be applied, is the same in cases involving constitutional questions as in decisions interpreting statutes, viz: Does the case sought to be reviewed establish a general rule of property which has been accepted and acted upon by the community, and a change in which would be productive of grave public inconvenience? When this question can be answered in the negative there seems to be no reason why the court should not retrace its steps, correct its errors and re-establish the principles of the law upon a sound basis.

Where there is such a conflict of authority that no settled rule can be derived from the cases, the rule of *stare decisis* manifestly has no application. Thus, the decisions of the circuit courts of the United States, in the different circuits, being in irreconcilable conflict as to the relative priority of liens given to material-men by State statutes for supplies furnished a vessel in her home port, and a mortgage of the vessel, Mr. Justice Lamar, in The Madrid, 40 Fed. Rep. 677, held that he was not required by the doctrine of *stare decisis* to follow a previous decision by his predecessor in the same circuit holding such lien inferior to a mortgage. See also Desplain v. Crow, 14 Oreg. 404; State v. Wapello, 13 Iowa, 388; Pleasant Tp. v. Ætna L. Ins. Co., 11 S. C. Rep. 215. And even where there is no conflict, less hesitation of course will be felt by the court in overruling one or two cases only, than in disturbing a doctrine which is well settled by numerous well considered adjudications. "It is going quite too far to say that a single decision of any court is absolutely conclusive as a precedent. It is an elementary principle that an erroneous decision is not bad law; it is no law at all. It may be final upon the parties before the court, but it does not conclude other parties having rights depending upon the same question." Butler v. Van Wyck, 1 Hill, 462. See also Leavitt v. Blatchford, 17 N. Y. 533; Pratt v. Brown, 3 Wis. 609; Callender's Adm'r v. Ins. Co., 23 Pa. St. 474; State v. Silvers, 47 N. W. Rep. 772.

WM. L. MURFREE, JR.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE.—Under a policy stipulating that the insurance does not extend to injuries received while engaged in, or in consequence of, any unlawful act, the fact that the assured was killed while living in a state of fornication with his mistress does not prevent a recovery, where it does not appear that the infliction of injury is a natural and necessary consequence of the unlawful association, as its probable and to be anticipated result.—*Accident Ins. Co. v. Bennett*, Tenn., 16 S. W. Rep. 723.

2. ADMINISTRATION—Settlement of Accounts.—An administrator who sells to decedent's widow an undivided half interest in land which he holds as administrator, also, of another co-tenant, and of which the purchaser requests him to retain possession as her agent, may be compelled by her heirs to account for half the rents collected after her death, even though he has not yet settled his accounts with the probate court; and in such a settlement he is entitled to credit for half the sums expended by him for taxes and improvements, together with a reasonable allowance for his services as agent, but not for money loaned to buy the land.—*Armstrong v. Cashion*, Ark., 16 S. W. Rep. 666.

3. ADVERSE POSSESSION. — Where a separate tract which is half prairie and half timber land might be easily inclosed, and is fit for cultivation, the erection of temporary structures, pasturing of hogs, cutting timber, and payment of taxes under claim of ownership, by one who resides at some distance from it, does not constitute adverse possession.—*Cook v. Farrah*, Mo., 16 S. W. Rep. 692.

4. APPEAL—Bill of Exceptions. — Under Code Civil Proc. Cal. § 649, which provides that a bill containing the exceptions to any decision may be presented to the court or judge for settlement, and, after having been settled, shall be signed by the judge, and filed with the clerk, the supreme court has no power to strike out part of the bill settled and certified by the trial court.—*Hyde v. Boyle*, Cal., 26 Pac. Rep. 1092.

5. APPEALABLE ORDER—Reference.—An order setting aside as premature an order settling the account of a referee in a suit to vacate a fraudulent assignment is not appealable, as it is neither a "final judgment" nor a "special order made after final judgment," within the meaning of Code Civil Proc. Cal. § 939.—*Etchebarne v. Roeding*, Cal., 26 Pac. Rep. 1079.

6. ATTACHMENT—Evidence.—Defendant hired a barge from plaintiffs for a certain *per diem*, with an agreement that, if it were not returned in as good condition as when hired, defendant was to pay the agreed value of the barge as upon a sale. The barge was returned in a worthless state: *Held*, that plaintiffs' claim is a "debt" or "a moneyed demand, the amount of which can be certainly ascertained," within the meaning of Code Ala. §§ 2929, 2931, and will support an attachment.—*Tennessee River Transp. Co. v. Kavanaugh*, Ala., 9 South. Rep. 395.

7. ATTORNEY AND CLIENT—Lien.—The attorney of a railroad company, who in the course of his regular duties has negotiated conveyances of the right of way and has received conveyances thereof, and has also negotiated donations of property for depot purposes and received conveyances thereof executed in his name as vendee, has a lien upon such papers for his salary and legitimate expenditures about the business, and may retain possession of them until such charges are paid.—*Finance Co. v. Charleston, etc. R. Co.*, U. S. C. C. (S. Car.), 46 Fed. Rep. 426.

8. ATTORNEYS — Misconduct — Disbursement. — An attorney drew a bill of complaint in a divorce suit, in which it was falsely stated that his client was a resident of Illinois. He allowed her to testify that she resided in Illinois, though he knew that such testimony was false, and introduced other evidence that would have been inadmissible if his client had not given such false testimony. He also introduced other false testimony, and gave his client what purported to be a copy of the decree before any decree had been entered, in reliance upon which copy his client married another person before a decree of divorce was entered: *Held*, that such conduct was cause for disbarment.—*People v. Beattie*, Ill., 27 N. E. Rep. 1096.

9. BASTARDY — Judgment Nunc pro Tunc. — Where entries by the trial judge on his docket show that in bastardy proceedings the jury rendered a verdict for the State, and the court fixed the amount to be contributed by defendant to the bastard's support at a certain sum, judgment may be entered thereon *nunc pro tunc* at a subsequent term.—*Kueblethaw v. State*, Ala., 9 South. Rep. 394.

10. BILLS OF EXCEPTIONS.—A bill of exceptions which contains a direction to the clerk to "copy the testimony taken by the short-hand reporter," and is signed by the judge before such testimony is written out, does not properly preserve the evidence and will be disregarded, notwithstanding an agreement by counsel that the bill might be signed and filed in that form.—*Tipton v. Renner*, Mo., 16 S. W. Rep. 668.

11. CARRIERS OF GOODS—Negligence—Limiting Liability.—A common carrier of live stock cannot by contract with a shipper relieve itself, either in whole or in part, from liability for injury or loss resulting from its own negligence.—*Chicago, etc. R. Co. v. Witty*, Neb., 49 N. W. Rep. 183.

12. CARRIERS OF PASSENGERS—Street Railways—Negligence.—Plaintiff was injured while attempting to get on board a street-car propelled by electricity, which he had signaled to stop. He attempted to enter before it came to a full stop; it started suddenly, throwing him down: *Held*, that the question of his contributory negligence was for the jury.—*Corlin v. West end St. Ry. Co.*, Mass., 27 N. E. Rep. 1000.

13. CONSTABLES—Liability on Bond.—A constable and his sureties are not liable on his official bond to a third person for services rendered in caring for property wrongfully seized by the officer under an execution.—*Hickman v. State*, Ind., 27 N. E. Rep. 1110.

14. CONSTITUTIONAL LAW. — Article 5, Organic Act Mont., provided that "no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury." Const. Mont. art. 3, § 8, provides that "all criminal actions in the district court shall be prosecuted by information after examination and commitment:" *Held*, that one charged with grand larceny, committed before the State constitution took effect, could not be convicted under an information.—*State v. Kingsly*, Mont., 26 Pac. Rep. 1066.

15. CONSTITUTIONAL LAW—Reduction of Salaries.—Act Cal. March 14, 1891, readjusting the salaries of all county officers of counties of the thirty-fifth class, and reducing the salaries of the sheriffs thereof, is not repugnant to Const. Cal. art. 1, § 11, providing that all "laws of a general nature shall have a uniform operation," nor to article 4, § 25, prohibiting the passage of any local or special law "affecting the fees or salary of any officer."—*Cody v. Murphey*, Cal., 26 Pac. Rep. 1081.

16. CONTRACTS—Breach—Damages.—In an action by the vendee for the vendors' breach of their agreement

not to carry on a certain business which they had thereto been engaged in, but had sold out to him, evidence of the amount cleared by them since they so engaged in breach of the agreement is admissible on the question of plaintiff's damages.—*Welsh v. Morris*, Tex., 16 S. W. Rep. 744.

17. CONTRACTS—Custom and Usage.— Where plaintiff sues for the breach of an express contract by defendant to furnish casing for the well which he had employed plaintiff to drill for him, and declares on an express contract alone, it is error to admit evidence of a custom in the vicinity that the owner of the well should furnish casing.—*Moore v. Kennedy*, Tex., 16 S. W. Rep. 740.

18. CONTRACTS—Lease—Partnership.—Upon the facts, *held* that contract herein is one of lease and not of partnership.—*Smith v. Schultz*, Cal., 26 Pac. Rep. 1087.

19. CONTRACTS—Parol Evidence.—On a conveyance of certain lots with the "appurtenances," the vendor "guarantied" for one year a monthly rental of $60 on the property sold, provided that "the buildings, improvements, and appurtenances remain in the condition as on day of sale." There was on the lots a blacksmith and workshop, and in it a number of tools: *Held*, that parol evidence was not admissible to show that the tools were "appurtenances," within the meaning of the contract, and that the removal of the tools was no defense to an action to recover the difference between the rent received and that guarantied.—*Johnson v. Nasworthy*, Tex., 16 S. W. Rep. 758.

20. CONTRACTS—Parol Evidence.—Though the written contract on which plaintiff sues may be lost or otherwise inaccessible to him, so that parol evidence is necessary to prove its contents, evidence of conversations between the parties pending the negotiations which resulted in the contract, which conversations were had before its execution, is incompetent. — *Nicholson v. Tarpey*, Cal., 26 Pac. Rep. 1101.

21. CONTRACTS—Performance.—One who agrees with a county board to give a certain sum for a certain purpose on condition that the county shall make a donation for the same purpose becomes bound by his agreement when the county raises and gives the specified amount; and a corporation organized under the agreement to become trustee to receive the money and carry out the purpose has no power, without consent of the county, to agree to other conditions, on breach of which the subscriber will be released from his obligation.—*La Fayette County Monument Corp. v. Ryland*, Wis., 49 N. W. Rep. 157.

22. CONTRACTS—Performance.—When B paid to F a valuable consideration for the right to dig a ditch across F's land so as to flow water into Baldock slough, and B takes possession thereof and cuts the ditch, and causes the water to flow through the same for many years, the contract is executed, and a purchaser from F takes with notice of B's interest, which is such that a court of equity will protect it.—*Baldock v. Atwood*, Oreg., 26 Pac. Rep. 1058.

23. CONTRACTS IN RESTRAINT OF TRADE.—An agreement between two manufacturers of glue from fish skins under a supposed valid patent, the object of which is to avoid competition between themselves and secure to each a reasonable profit, is not against public policy, the article in question not being one of prime necessity, nor a staple commodity ordinarily bought and sold in the market.—*Gloucester Isinglass & Glue Co. v. Russia Cement Co.*, Mass., 27 N. E. Rep. 1005.

24. CONVERSION—Estoppel.—Where a person of whom goods are demanded says that he has them, but will not give them up, he is estopped, in an action for conversion brought on such demand, admission, and refusal, from claiming that he did not at such time have possession and control of them.—*Cadwell v. Pray*, Mich., 49 N. W. Rep. 150.

25. CORPORATIONS—Stockholders.—For any fraudulent and wrongful dealing with corporate property prejudicially affecting the interests of the corporation, and hence of its stockholders, the right of action is primarily in the corporation, and is to be asserted by it, rather than by individual stockholders, unless it be shown to be impracticable for the complaining stockholders to move the corporation to sue.—*Hodgson v. Duluth, etc. R. Co.*, Minn., 49 N. W. Rep. 197.

26. CORPORATIONS—Stockholders' Liability.—In order to enforce the additional liability of stockholders over and above their dues on stock subscriptions, which is provided in favor of creditors of insolvent and dissolved corporations by Const. Ala. art. 13, § 3, and Code Ala. § 1760, the proper proceeding is a chancery suit to which all stockholders are parties, and non-joinder of some of them will render the bill demurrable.—*Friend v. Powers*, Ala., 9 South. Rep. 392.

27. CRIMINAL EVIDENCE—Assault with Deadly Weapon.—On an indictment for assault with a deadly weapon, while it is competent, as showing the present relation between the parties, to show by the prosecuting witness that he has since the assault instituted proceedings against defendant for a breach of the peace, it is error to allow him to testify further that these proceedings were based on an unprovoked attack on him by plaintiff since the original assault.—*People v. Webster*, Cal., 26 Pac. Rep. 1080.

28. CRIMINAL EVIDENCE — Homicide.—Evidence that defendant bought a gun a few weeks before the homicide, and practiced with it, is admissible as showing the condition of his mind, and the *animus* with which the act was done.—*Bolling v. State*, Ark., 16 S. W. Rep. 658.

29. CRIMINAL LAW—Assault with Deadly Weapon.—On a trial for assault with a deadly weapon, an instruction that if the jury find that defendant did make an assault with a knife, which was a deadly weapon, and not in necessary self-defense, it is their duty to find him guilty, but if they find that he made the assault in necessary self-defense, in order to prevent D. O. from committing a violent assault upon him, then he is not guilty, does not exclude the consideration of apparent necessity.—*People v. Dollar*, Cal., 26 Pac. Rep. 1086.

30. CRIMINAL LAW—Former Acquittal.—When the plea of not guilty, and a special plea of *autrefois acquit*, are pleaded at the same time, the law and practice in this State do not imperatively require two trials by separate juries, but the matter is within the sound legal discretion of the judge before whom the trial is conducted; but in all cases when both issues are tried by a single jury the verdict must respond to both issues separately.—*State v. Hudkins*, W. Va., 13 S. E. Rep. 867.

31. CRIMINAL LAW—Gaming.—A table upon which poker is played, and which has a hole in the center, into which the players put a chip for the proprietor when they hold threes, flushes, or fulls, is not a gaming table, and its proprietor cannot be convicted of keeping and exhibiting a gaming table, under Pen. Code Tex., art. 358, prohibiting persons from keeping, for the purpose of gaming, "any gaming table or bank of any name or description whatever, or any table or bank used for gaming which has no name."—*Lyle v. State*, Tex., 16 S. W. Rep. 765.

32. CRIMINAL LAW— Homicide.—Where the name of deceased alleged in the indictment for murder is "Wm. Seaffers," but the named proved is "Wm. Seaforth," the variance is fatal.—*Milontree v. State*, Tex., 16 S. W Rep. 674.

33. CRIMINAL LAW—Larceny—Trespass.—Where one tried for stealing a horse testified that he only took it for the purpose of riding to his brother's 21 miles away, and did not intend to steal it, the jury should have been instructed as to the distinction between trespass and theft, and that if defendant took the horse with the intent of appropriating it temporarily, but not permanently, they should acquit him.—*Schultz v. State*, Tex., 16 S. W. Rep. 756.

34. CRIMINAL LAW—Murder.—Under Code Crim. Proc. Tex. art. 343, a person in an unorganized county on the frontier, whose saddles are stolen, may immediately pursue and arrest the offenders, and recover his property without a warrant, and a homicide committed by

the offender while resisting such arrest is not justifiable, on the ground of self defense.—*Porez v. State*, Tex , 16 S. W. Rep. 750.

35. CRIMINAL LAW — Murder.—Where the indictment charges killing upon express malice, and the evidence shows that the murder was committed in the perpetration of robbery, it is proper to charge that murder committed in the perpetration of robbery is murder in the first degree.—*Mendez v. State*, Tex., 16 S. W. Rep. 766.

36. CRIMINAL LAW — Murder — Defense of Suicide.—Where defendant in a trial for murder contends that deceased committed suicide, the presumption that a person found dead, with marks of violence upon her person, did not commit suicide, cannot be applied against the presumption of plaintiff's innocence, so as to place upon him the burden of proving suicide by a preponderance of evidence.—*Persons v. State*, Tenn., 16 S. W. Rep. 726.

37. CRIMINAL LAW — Obscene Language. — One who, though without knowing of the presence of a female, intentionally uses abusive and obscene language, which is heard by her, is guilty under Code Ala. 1886, § 4031, prohibiting the use of such language in the presence or hearing of any female.—*Thomas v. State*, Ala., 9 South. Rep. 398.

38. CRIMINAL LAW — Prostitutes — Night-walking.—A woman who strolls the street at night, for the unlawful purpose of picking up men for lewd purposes, whether for gain or not, is a night-walker, and is indictable at common law.—*Stokes v. State*, Ala., 9 South. Rep. 400.

39. CRIMINAL LAW—Selling Pools.—On a trial for being present in a pool-room and selling pools on base-ball games, a witness testified that he asked defendant for No. 10, which read "Brook , Pitts., Cleve., Phila.," paid some money, and received a ticket with "10" upon it in pencil. Afterwards he asked defendant if combination 10 had won, to which he answered, "No." Witness had been in the place a number of times. *Held*, that he was properly allowed to testify that combination 10 meant the four names in the row numbered 10, and that, as far as he knew, the names signified base-ball clubs.—*Commonwealth v. Watson*, Mass., 27 N. E. Rep. 1003.

40. CRIMINAL PRACTICE—Obtaining Goods under False Pretenses.—An indictment charging a conspiracy between the defendants to obtain goods under color of a contract between one Kennedy and a corporation, in which Kennedy should assume to be one Brown, who was pretended to be a wealthy person, sufficiently charges a conspiracy to obtain goods under false pretenses.—*Commonwealth v. Meserve*, Mass., 27 N. E. Rep. 997.

41. CRIMINAL PRACTICE—Perjury.—An indictment for perjury which merely alleges that defendant testified before the grand jury that he had not stated at a specified time and place to certain parties that he knew who struck another man is insufficient, as it does not show that defendant swore falsely in any material particular. —*Agar v. State*, Tex., 16 S. W. Rep. 762.

42. CRIMINAL PRACTICE—Receiving Stolen Goods.—An information charging defendant with feloniously receiving stolen goods, "the property of the estate of G. H. Tay and O. J. Backus, co-partners doing business under the firm name of G. H. Tay & Co.," is sufficiently direct and certain as to the ownership of the stolen property.—*People v. Ribolsi*, Cal., 26 Pac. Rep. 1082.

43. CRIMINAL PRACTICE—Theft.—Where the owner of a horse voluntarily lends it to another, and the borrower converts it to his own use, he can only be indicted under Pen. Code Tex. art. 742, providing that any person having possession of personal property of another, by virtue of a contract of hiring or borrowing, who shall fraudulently convert such property to his own use shall be guilty of theft. An ordinary indictment for theft will not lie.—*Williams v. State*, Tex., 16 S. W. Rep. 760.

44. CRIMINAL PRACTICE—Use of Another's Animal.—Code Ala. 1886, § 3861, provides that "any person who takes for temporary use, are uses temporarily, any animal or vehicle without the consent of the owner, and without a *bona fide* claim of title thereto, must, on conviction, be fined; but no prosecution must be commenced or indictment found" except upon complaint of the owner. *Held*, that whether the prosecution was commenced or indictment found on complaint of another than the owner is matter of defense, and need not be negatived in the indictment.—*Bellinger v. State*, Ala., 9 South. Rep. 399.

45. CRIMINAL TRIAL.—Where the court, in excluding evidence, stated in the hearing of the jury that a man charged with crime had no right to manufacture evidence in his own favor, such statement, unsupported by facts, is improper, as implying that defendant had attempted to manufacture evidence, and tends to mislead the jury.—*Felker v. State*, Ark., 16 S. W. Rep. 663.

46. DEED—Acknowledgment.—Though a notary's certificate of acknowledgment fails to show that it was taken in Texas as required by the laws then in existence it is sufficient if the seal thereto attached, whose form is prescribed by law, shows that the certificate was made by an officer in that State.—*Stephens v. Mott*, Tex., 16 S. W. Rep. 731.

47. DEED — Acknowledgment. — Under Conveyance Act Ill. § 24, providing that the party executing an instrument must be personally known to the officer taking the acknowledgment, or shall beproved to be such by a creditable witness, a probate clerk who certifies to an acknowledgment that the grantor in a deed is personally known to him performs a ministerial act, and is liable to the grantee if the certificate is false.—*People v. Bartels*, Ill., 27 N. E. Rep. 1091.

48. DEED—Quitclaim—Title—Parol Agreement.—Parol evidence is inadmissible to show an agreement between the grantor and grantee of a quitclaim deed that if the title failed to a part of the land which was in dispute the price paid therefor should be refunded.—*Putnam v. Russell*, Mich., 49 N. W. Rep. 147.

49. DESCENT OF LANDS.—Under Rev. St. Ind. 1881, § 2487, providing that if a man marry a second wife, by whom he has no issue, the land which at his death descends to her shall, at her death, descend to his children by the former marriage, the widow takes one third in fee, and the fact that she, by quitclaim mesne conveyances, acquires the interest of the heirs, will not estop them from recovering her one-third after her death.—*Montgomery v. McCumber*, Ind., 27 N. E. Rep. 1114.

50. DIVORCE—Cross complaint.—In an action for divorce for abandonment, where a cross-complaint was filed alleging a subsequent abandonment of defendant, and the court refused to consider the same except by way of answer, it was error without injury, where the findings show that defendant abandoned plaintiff at the time alleged, and lives apart from him against his will and without his consent.—*Blakely v. Blakely*, Cal., 26 Pac. Rep. 1072.

51. DIVORCE—Foreign Divorce.—Under How. St. Mich. § 6228, subd. 6, providing that the courts may divorce any resident of the State whose consort shall have obtained a divorce in another State, the court may grant a divorce to a resident of the State, award alimony, and enforce its order by imprisonment as for a contempt, although the defendant may have been legally divorced in another State.—*Van Inwagen v. Van Inwagen*, Mich., 49 N. W. Rep. 154.

52. DIVORCE FOR CRUELTY—Condonation.—Cruelty in the marriage relation may be the subject of condonation. Condonation may be implied from a voluntary resumption of discontinued cohabitation. — *Clague v. Clague*, Minn., 49 N. W. Rep. 198.

53. EJECTMENT—Evidence of Title.—Prior possession of plaintiff, or parties through whom he claims for many years, is sufficient evidence of title to support ejectment.—*Leonard v. Flynn*, Cal., 26 Pac. Rep. 1099.

54. EJECTMENT—Title by Judicial Sales. — One who takes a conveyance, before expiration of the time for redemption, from the purchaser at a sale under execu-

tion, and afterwards receives a deed from the sheriff, acquires a perfect title.—*Leonard v. Flynn*, Cal., 26 Pac. Rep. 1097.

55. EJECTMENT—Writ of Possession.—Under Rev. St. Ill. ch. 45, § 10, which provides that "the rules of pleading and practice in other actions shall apply to actions of ejectment so far as applicable," and Rev. St. Ill. ch. 77, § 6, which provides that no execution shall issue upon any judgment after the expiration of seven years unless the judgment be revived, a writ of possession cannot be issued upon a judgment in ejectment more than seven years after the judgment was rendered unless the judgment has been revived.—*Wilson v. Trustees*, Ill., 27 N. E. Rep. 1103.

56. EXECUTION AGAINST FIRM.—Partners being severally, as well as jointly, liable, the property of either may be levied on to satisfy a partnership debt, and the liability may be enforced against the property of each. —*Daly v. Bradbury*, Minn., 49 N. W. Rep. 190.

57. EXECUTORS—Accounting.—Under Rev. St. Mo. 1879, § 240, an executor who defers the collection of a note which is lost by failure of the maker is not entitled to credit for losses thus sustained, where the will directs the collection of accounts as soon as possible, and it appears that the delay was merely to accommodate the maker, who was believed to be solvent, and that another note due the testator by the same party had been promptly paid.—*Powell v. Hurt*, Mo., 16 S. W. Rep. 669.

58. EXECUTORS—Sale of Land to Pay Debts.—Where a will provides for the payment of debts out of certain portions of the personal estate, and also provides that the personal estate shall be devoted to the maintenance of the widow and the education of the children, and directs that the testator's business shall be carried on for a series of years, and it is shown that the personalty has been exhausted in executing such directions, and by war and pillage, a sale of real estate cannot be made, under Code Tenn. (Mill. & V.) §§ 3105, 3106, providing that, where an administrator has exhausted the personal estate in the payment of debts, there may be a sale of the real estate.—*Allen v. Shanks*, Tenn., 16 S. W. Rep. 715.

59. FORCIBLE ENTRY AND DETAINER.—Where the petition in forcible entry and detainer asks the recovery of possession of a whole quarter section, and the proof shows plaintiff to be in possession of a very small part of it, the variance is immaterial.—*Seeley v. Adamson*, Okla., 26 Pac. Rep. 1069.

60. FRAUDULENT CONVEYANCES.—Where an insolvent engaged in business transferred his stock, fixtures, and the lease of his store to certain of his creditors in satisfaction of their claims, and they had notice that he was financially embarrassed, and received the transfer under such circumstances as to put them upon inquiry as to his solvency: *Held*, that they are chargeable with notice of such facts touching his financial condition as reasonable inquiry and investigation would have disclosed to them.—*Holcombe v. Ehrmantraut*, Minn., 49 N. W. Rep. 191.

61. FRAUDULENT CONVEYANCES — Consideration. — A conveyance of real estate by a father to a minor son, for the son's services during his minority, is a voluntary conveyance, without legal consideration, and therefore void as to the creditors of the parent if made when the latter had no other property subject to execution.—*Stumbaugh v. Anderson*, Kan., 26 Pac. Rep. 1045.

62. FRAUDULENT CONVEYANCES—Husband and Wife.—In an action to subject certain lands to the satisfaction of a judgment, the complaint alleged that the legal title thereof was in one to whom the judgment debtor had conveyed fraudulently and without consideration, but stated that the wife of the latter claimed to own such lands, and she was therefore made a defendant: *Held*, that under such complaint it was competent to introduce evidence impeaching the wife's title.—*Jamison v. Baggot*, Mo., 16 S. W. Rep. 697.

63. FRAUDULENT CONVEYANCES—Possession.—Though Civil Code Cal. § 3440, declares that transfers of personal

71. JUDGMENT— Rescission. — The satisfaction of a judgment on a settlement between plaintiff and defendant cannot be rescinded for fraud in the procurement of the settlement, except on the condition that plaintiff shall return to defendant whatever she has received pursuant to the settlement; and it is not a sufficient substitute for such a return that the court, in setting aside the judgment, has ordered that the amount paid pursuant thereto shall be deducted from the existing property are conclusively presumed to be fraudulent where they are "not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred," it is a question for the court what constitutes immediate delivery and continued change of possession and its finding thereon, upon conflicting evidence, will not be disturbed on appeal.—*Claudius v. Aguirre*, Cal., 26 Pac. Rep. 1077.

64. HOMESTEAD—Acquisition.—Where the head of a family buys land, and begins the erection of a house thereon with the intention of making it his home, and of ultimately residing there, though for a time he is forced by lack of means to discontinue his building, but there is no intention to abandon it, the homestead is complete, and a deed of the land made by him, in which his wife does not join him, does not divest it.—*Dobkins v. Kuykendall*, Tex., 16 S. W. Rep. 743.

65. HOMESTEAD—Separate Lots.—A lot distant three or four blocks from the homestead proper, used by the debtor for stabling his cow and for the purpose of the family washing, and which is also used in his business as a wood-yard, is not so connected in use with the homestead as to constitute a part of it.—*Achilles v. Willis*, Tex., 16 S. W. Rep. 746.

66. INNKEEPER'S LIABILITY—Guests.—One who keeps a house for the entertainment of all who choose to visit it, and extends a general invitation to the public to become guests, is an innkeeper, and liable as such, though the house is situated on inclosed grounds.—*Fay v. Pacific Imp. Co.*, Cal., 26 Pac. Rep. 1099.

67 INSOLVENCY— Discharge. — The insolvent act of California, §§ 49, 55, declare void "fraudulent preferences contrary to provisions of this act," preferences "made in contemplation of becoming insolvent," and preferences "made within one month before filing a petition in insolvency:" *Held*, that allegations by a creditor that an insolvent made certain preferences more than a year before the filing of his petition, knowing himself then to be insolvent, do not show valid grounds of opposition to the insolvent's discharge.—*Dyer v. Bradley*, Cal., 26 Pac. Rep. 1103.

68. INTOXICATING LIQUORS — Mandamus. — A party wishing to apply for a license to sell intoxicating liquors in quantities less than one gallon must pay into the county treasury the amount of the tax before the license can issue, and, if the county court refuse the license, the party cannot sue the county to recover back the sum paid.—*McLeod v. Scott*, Oreg., 26 Pac. Rep. 1061.

69. INTOXICATING LIQUORS — Nuisance— Injunction.— Under section 18 of chapter 32 of the Code, a court of equity cannot restrain by injunction a party charged with selling intoxicating liquors contrary to law, or abate the house, building, or place where such intoxicating liquors are alleged to be sold contrary to law, until the owner or keeper of such house or place has been convicted of such unlawful selling at the place named in the bill.—*Hartley v. Henretta*, W. Va., 13 S. E. Rep. 375.

70. JUDGMENT — Amendment of Record.—Where, on foreclosure, the judge made an order submitting in place of plaintiff his successor in interest, but such order was not entered by the clerk, a subsequent order *nunc pro tunc* making the substitution becomes a part of the judgment roll, as provided by Code Civil Proc. Cal. § 670, and binds the judgment debtor in an action by the judgment creditor's executors to collect the same.—*Crim v. Kessing*, Cal., 26 Pac. Rep 1074.

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judgment or any final judgment recovered in the action.—*Lee v. Vacuum Oil Co.*, N. Y., 27 N. E. Rep. 1018.

72. JUDICIAL NOTICE—Ordinances.—Courts of a municipal corporation will take judicial notice of its ordinances without allegation or proof of their existence.—*Town of Moundsville v. Velton*, W. Va., 13 S. E. Rep. 373.

73. LANDLORD AND TENANT—Dangerous Premises.—The owner of a tenement-house who maintains therein a stairway covered by a carpet so worn out as to put passers in danger of tripping by stepping in the holes, and who has been notified of its dangerous condition, is liable for the injuries sustained by one of the occupants of such house by reason of such condition.—*Peil v. Reinhart*, N. Y., 27 N. E. Rep. 1077.

74. LIBELOUS PUBLICATIONS—Exposure to Ridicule.—Publications calculated to expose one to public contempt or ridicule are libelous, although they involve no imputation of crime, and are actionable without a special allegation of damages.—*Holston v. Boyle*, Minn., 49 N. W. Rep. 203.

75. LIFE INSURANCE—Assessment Companies.—Where an assessment insurance company becomes insolvent, and its affairs vested in the superintendent of the insurance department, death losses must be paid *pro rata* from its assets, as required by Rev. St. Mo. 1889, § 5934, although an assessment for a particular loss had been made and collected, but not paid to the beneficiary prior to insolvency.—*Ellerbe v. Farmers & Mechanics' Mut. Aid Ass'n*, Mo., 16 S. W. Rep. 683.

76. LIMITATION — Action on Foreign Judgment. — Where an action is brought in this State upon a judgment of a court of record of a sister State, which is in full force in that State, the statute of limitations of this State and not that of the sister State, will control.—*Bauserman v. Charlott*, Kan., 26 Pac. Rep. 1051.

77. LIMITATION OF ACTION.—Acts Ark. 1887, p. 99, § 1, provides that where a railroad is constructed across a highway the railroad company must so construct same or so alter the highway that the latter shall not have more than a certain grade, and that if the cut be of too great depth a bridge may be built. *Held*, that an action for damages under such statute, begun more than seven years after the railroad had taken possession, was not barred by a seven year statute of limitations, where the evidence fails to show that such possession was adverse.—*State v. Kansas City, Ft. S. & M. Ry. Co.*, Ark., 16 S. W. Rep. 657.

78. MANDAMUS—Insurance Commissioner. — The insurance commissioner of this State, in granting or revoking a certificate authorizing insurance companies to transact business within the State, acts within the limits of a discretion expressly conferred upon him by statute. Such official discretion, when once it has been exercised, cannot be controlled or reviewed by *mandamus*.—*State v. Carey*, N. Dak., 49 N. W. Rep. 164.

79. MANDAMUS TO AUDITOR—Void Tax-sale.—An action may be brought against a county auditor, by a person entitled to require him to issue his warrant upon the county treasurer, to compel him to issue it.—*Corbin v. Morrow*, Minn., 49 N. W. Rep. 201.

80. MASTER AND SERVANT—Contract.—Plaintiff contracted for the removal of his buildings with P., who sublet the contract to defendants, and then gave up his contract. Defendants continued to work on their contract, and negligently injured the buildings. *Held*, that plaintiff could sue defendants for damages, though there was no privity of contract between them: and, if regarded as servants of plaintiff, they would also be liable, though plaintiff might not, as master, be liable for their acts.—*Bickford v. Richards*, Mass., 27 N. E. Rep. 1014.

81. MORTGAGE.—A mortgage to a county to secure a loan of school funds is not rendered invalid by reciting that it was for the use of a specified section school land, instead of for the use of the township to which the fund belonged.—*Grant v. Huston*, Mo., 16 S. W. Rep. 680.

82. MORTGAGE—Deed Absolute.—An absolute deed of real estate, or a bill of sale of personal property absolute on its face, executed and intended as security for a debt or loan, will be construed as a mortgage, as between the parties thereto, and all others, except *bona fide* purchasers for value without notice.—*Kemp v. Small*, Neb., 49 N. W. Rep. 169.

83. MORTGAGE—Foreclosure.—Where lands were sold under a decree of foreclosure against two persons, and bought in by the mortgagee, and on appeal the decree was reversed as to one, the mortgagee cannot thereafter treat the original decree as valid against the latter for the purpose of retaining title under the foreclosure, and invalid for the purpose of charging interest and taxes.—*Hibernia Sav. & Loan Soc. v. Jones*, Cal., 26 Pac. Rep. 1089.

84. MORTGAGE—Misrepresentations—Release.—A creditor, a part of whose debt was secured by mortgages, released such securities, and accepted instead another and later mortgage, covering also debts not before secured; he supposing, as the mortgagor represented the fact to be, that there were no other liens on the property. In fact there were intervening mechanics' liens. *Held*, that a finding of these facts alone would not entitle the mortgage creditor to a judgment reinstating his prior mortgages, it not appearing that he had released them in reliance upon the misrepresentation.—*McKeen v. Haseltine*, Minn., 49 N. W. Rep. 195.

85. MORTGAGE—Permanent Improvements.—On a bill to redeem from the purchaser at a void sale, in a suit to enforce the lien of a mortgagee, or his assignee, the defendant is entitled to an allowance for the value of permanent improvements placed on the premises.—*Hicklin v. Marco*, U. S. C. C. (Oreg.), 46 Fed. Rep. 424.

86. MORTGAGE—Power of County Clerk to Release.—Under Rev. St. Mo. 1879, § 7114, *held*, that payment of a school fund mortgage to a deputy county clerk, who failed to pay the amount into the treasury, did not release the mortgage.—*Knox County v. Goggin*, Mo., 16 S. W. Rep. 684.

87. MUNICIPAL CORPORATION — Control of Streets. — One who contracts to build a State capitol in a city has no right without the consent of the municipal authorities, to lay and operate a steam railway in the streets for the purpose of transporting materials, although they are of such a nature that the railway is a necessity; and therefore the council in granting the privilege may regulate the manner of using the road, prohibit its sale or transfer, and provide that the contractor shall be primarily liable for all injuries to persons and property.—*Taylor v. Dunn*, Tex., 16 S. W. Rep. 782.

88. MUNICIPAL CORPORATION — Defective Streets.—Plaintiff was a conductor of an open horse car, and, while standing on the running board thereof, collecting fares, was injured by a barrier planted in the street by the city authorities, close to the rails, as a guard, where the street had caved in. *Held* proper to charge that, if the barrier was reasonably necessary to protect the public, and its position was indicated by sufficient lights, it was not a defect for which the city would be liable, no matter how near it came to the track.—*Powers v. City of Boston*, Mass., 27 N. E. Rep. 995.

89. MUNICIPAL CORPORATION—Public Improvements—Damages.—When property is damaged by the location and construction of a public improvement near it, and the property is not specially benefited by the improvement, the measure of the property owners' damages is the difference between the value of the property immediately before the location and construction of the improvement and its value immediately afterwards.—*City of Plattsmouth v. Boeck*, Neb., 49 N. W. Rep. 167.

90. MUNICIPAL CORPORATION—Ordinance.—A village ordinance which provides that the costs of an improvement shall be paid by special assessment, "to be levied on the property benefited to the amount that the same may be legally assessed," sufficiently complies with the statute requiring that the assessment made by the commissioners shall be such that each tract shall be assessed of the whole cost in the proportion in which they will be severally benefited.—*Burhaus v. Village*, Ill., 27 N. E. Rep. 1088.

91. MUNICIPAL CORPORATION—Sale of Bonds.—Where funds derived from the sale of bonds of a city of the third class are received either by the city treasurer or other person acting in behalf of the city, the entire amount, should, on demand, be paid into the city treasury. Such persons cannot fix their own compensation for services in respect to such funds, or withold a part of the proceeds as compensation for their services; but any such claim must be presented to the city council in writing, and allowed in the manner prescribed by statute.—*City v. Reed*, Kan., 26 Pac. Rep. 1043.

92. MUTUAL BENEFIT INSURANCE—Mandamus.—Where the by laws of a mutual benefit association provide that its members shall be subject to but one assessment for each death loss, and one assessment is made from which only part of the amount due on a certificate is paid, *mandamus* will not lie to compel the levy of another assessment in order to pay the balance, and it is immaterial in that regard whether the first assessment was sufficient to have paid the claim in full or not.—*People v. Masonic Guile & Mut. Ben. Ass'n*, N. Y., 27 N. E. Rep. 1037.

93. NEGLIGENCE—Dangerous Premises.—The proprietor of a ferry is not bound to maintain guards or railings at the end of his boat, when not in actual use, so as to prevent runaway teams or stray animals on the highway from entering and passing over the same into the river.—*Evans v. Goodrich*, Minn., 49 N. W. Rep. 188.

94. NEGOTIABLE INSTRUMENT—Inland Bill of Exchange.—An order for the payment of a sum certain to a third person is none the less a bill of exchange because it shows on what account it is to be applied, or the consideration which has been received.—*Hillstrom v. Anderson*, Minn., 49 N. W. Rep. 187.

95. NEGOTIABLE INSTRUMENT—Pledge.—Where negotiable promissory notes, pledged to an innocent holder to secure a pre existing debt due from the payee to the pledgee, are subject to equitable defenses as between the maker and payee, and are of a greater amount than the pre-existing debt, the recovery of the pledgee against the maker is limited to the amount of the pre-existing debt.—*Farmers' State Bank v. Blevins*, Kan., 26 Pac. Rep. 1044.

96. NEGOTIABLE INSTRUMENT—Protest—Notary.—In an action against an indorser of a promissory note, a notarial certificate of protest under seal is *prima facie* evidence of such protest, although given in another State.—*Johnson v. Brown*, Mass., 27 N. E. Rep. 995.

97. OFFICERS—Eligibility.—Elliott's Supp. St. Ind. § 1391 (Acts Ind. 1889, p. 425), providing that any person who has held the office of township trustee for two consecutive terms at the time of the township election of April, 1890, shall be ineligible to the office for the next ensuing term, does not apply to a trustee who, having held two consecutive terms up to that time, holds over because his successor was not then elected.—*State v. Bogard*, Ind., 27 N. E. Rep. 1113.

98. PARTITION—Dower—Collateral Attack.—Where a widow signs a petition for partition of her husband's lands, but allows to be included in the description thereof a parcel belonging to herself, she cannot, 20 years later, after accepting the dower assigned, attack the validity of the partition on the ground that she was not a party thereto.—*Akers v. Hobbs*, Mo., 16 S. W. Rep. 682.

99. PARTNERSHIP—Dissolution.—The dissolution of a copartnership by the death of a partner terminates a contract of employment for a year between the firm and a salesman, under Civil Code Cal. § 1996, providing that every employment in which the power of the employee is not coupled with an interest in the subject, is terminated by notice to him of the death of the employer, and if the surviving partners retain him to assist in winding up the affairs of the partnership without an express agreement, the implied contract is only for such time as his services may be needed, and at such a salary as his services may be reasonably worth.—*Louis v. Eifelt*, Cal., 26 Pac. Rep. 1095.

100. QUO WARRANTO—Prohibition.—Where a court, without jurisdiction, has issued a writ of *quo warranto* to determine title to an office, a writ of prohibition will lie, although judgment of ouster, with costs, has been entered, and execution issued, when it appears that it has not yet been enforced.—*State v. Rombauer*, Mo., 16 S. W. Rep. 695.

101. RAILROAD COMPANIES—Construction of Road.—A railroad company chartered under the general law of the State may complete and operate a part of its railroad, and, as to the part so completed and operated, retain its corporate existence, franchise, and powers.—*Wheeling Bridge, etc. Ry. Co. v. Camden Consolidated Oil Co.*, W. Va., 13 S. E. Rep. 369.

102. REAL ESTATE BROKER—Compensation.—One C was employed by Y to sell certain city property, and effected an exchange of real estate with one P. After the transaction was complete, P paid C $100 for his services, although he testified that he had previously not employed him: *Held*, there being no charge of bad faith, that if Y had employed C to sell his property, and he had procured a sale and exchange of the same upon terms satisfactory to Y, he was entitled to a fair compensation for his services.—*Campbell v. Yager*, Neb., 49 N. W. Rep. 181.

103. REAL ESTATE AGENT—Compensation.—An agent authorized "to sell" real estate, and for which the compensation to be paid is agreed upon, does not earn such compensation by procuring a person to proceed so far towards a contemplated purchase as to pay a part of the price as earnest money, but who enters into no obligatory contract to purchase, and who, upon examination of the title, refuses to accept a deed of conveyance.—*Yeager v. Kelsey*, Minn., 49 N. W. Rep. 199.

104. RECEIPT—Parol Evidence.—A receipt for $500, being amount received from lecture given by C in Hollis-street Church for memorial window to be put in said church as per agreement," does not constitute an agreement to receive such amount in full satisfaction of the sum due.—*MacDonald v. Dana*, Mass., 27 N. E. Rep. 993.

105. REMOVAL OF CAUSES—Admission of Territory.—The Idaho admission act, providing for transfer, from territorial to national courts of such causes as might have been commenced in the latter courts, had they existed when the actions were instituted, does not give to such national courts a greater or different jurisdiction from that granted to other United States coruts, nor to the citizens of Idaho different privileges from those enjoyed by the citizens of other territories.—*Johnson v. Bunker Hill, etc. C. Co.*, U. S. C. C. (Ida.), 46 Fed. Rep. 417.

106. RES ADJUDICATA—Partition.—Under 1 Gav. & H. St. Ind. p. 294, § 18, where after the second marriage, a widow and her children conveyed their inherited land, and the grantee, in a suit wherein both the widow and the children were made defendants, quieted title, the decree estopped the children from disputing, after the widow's death, her right of alienation, since, though their rights did not accrue until after her death, they had had an opportunity to litigate the validity of her alienation.—*Hawkins v. Taylor*, Ind., 27 N. E. Rep. 1117.

107. RES ADJUDICATA—Trespass.—A judgment for trespass in cutting trees on lands of a church, recovered by one who sued as a deacon of the church, cannot be pleaded by defendant as an adjudication in an action for the same trespass by the trustees of the church.—*Allison v. Little*, Ala., 9 South. Rep. 388.

108. SALE—Warranty—Parol Evidence.—Where there is a written warranty on a sale of personal property, no prior or contemporaneous oral warranty can be shown.—*Bradford v. Neil*, Minn., 49 N. W. Rep. 193.

109. SALE—Warranty.—A warranty by the seller of stock of a corporation that there were no assessments "about to be made" upon the stock is not broken by the fact that shortly after the sale the stockholders, by agreement, issued new stock to be purchased by them

selves, the proceeds to be applied in payment of debts. —*Humphrey v. Merriam*, Minn., 49 N. W. Rep. 199.

110. SPECIFIC PERFORMANCE—Judgment.—In an action for damages for breach of a contract to exchange lands, the answer prayed that, in case the court should adjudge plaintiff's title to his lands to be good so that defendant was bound to accept a conveyance of them, it decree a specific performance: *Held*, defendant cannot complain that the court tried and decided the action as one for specific performance.—*Mealey v. Finnegan*, Minn., 49 N. W. Rep. 207.

111. SPECIFIC PERFORMANCE— Part Performance.—In an action for specific performance, the evidence showed that defendant placed the property in the hands of an agent to sell or exchange, and by his efforts met plaintiff, and agreed orally to exchange with him. Plaintiff left a deed with the agent, but defendant refused to accept it: *Held*, that a delivery to the agent was not a delivery to defendant, so as to constitute part performance, and take the agreement out of the statute of frauds.—*Swain v. Burnette*, Cal., 26 Pac. Rep. 1093.

112. SUNDAY CONTRACT.—Plaintiff left a horse with defendant for pasturage, under a contract to pay a certain sum per month. Defendant knew that other horses in the pasture were diseased, but he concealed this from plaintiff, and plaintiff's horse contracted the disease. He sued a plea of trespass on the case, claiming damage: *Held*, that the action was in tort, and the fact that the contract of pasturage was made on Sunday was no defense.—*Costello v. Ten Eyck*, Mich., 49 N. W. Rep. 152.

113. TRESPASS.—In an action for damages for maliciously killing plaintiff's dog a general verdict for the plaintiff is not inconsistent with a special finding that the dog was in the habit of leaving plaintiff's premises, barking at travelers on the highway, and frightening horses.—*Jacquay v. Hartzell*, Ind., 27 N. E. Rep. 1105.

114. TRESPASS—Estoppel.—One who without right and by trespass enters and occupies the land of another cannot claim, by reason of anything he may do upon it, and the owner's delay (short of the time limited by statute) to oust him, that the owner is estopped to seek any appropriate legal or equitable remedy in respect to it.—*Village v. Great Northern Ry. Co.*, Minn., 49 N. W. Rep. 205.

115. TRIAL—Disqualification of Juror.—Where the accused has not exhausted his peremptory challenges, he cannot complain that a juror, not peremptorily challenged by him was disqualified.—*People v. Aplin*, Mich., 49 N. W. Rep. 148.

116. TRIAL—Misconduct of Counsel.—In an action to recover for lumber sawed, counsel for defendant in his argument said to the jury: "Your experience is that you do well if you come out even, after you give your timber." There was no proof that the lumber was not so sawed as to yield a profit: *Held*, error to refuse to strike out such remark.—*Jackson v. Robinson*, Ala., 9 South. Rep. 391.

117. TRUST AND TRUSTEE—Resignation—Counsel Fees. —In a proceeding instituted by a trustee for leave to resign and to procure the appointment of a new trustee, the beneficiaries who are made parties are not entitled to allowances out of the fund for counsel fees, as such allowances can only be made to trustees or those occupying trust relations towards the fund not to beneficiaries.—*In re Holden*, N. Y., 27 N. E. Rep. 1063.

118. USURY—Evidence.—Evidence that the payee of a note intentionally included therein a sum greater than the amount loaned, with 10 per cent. interest on the face amount of the note, whereby he secured to himself a greater compensation for the forbearance of the sum actually loaned than the statute allows, is sufficient to support the charge of usury.—*Holmen v. Rugland*, Minn., 49 N. W. Rep. 189.

119. USURY—Separate Notes.—Where two notes are given in renewal of another which was usurious, the first being for the amount of the debt computed at the legal rate and the second for the usurious interest, the plea of usury is no defense to the first note in the hands of a transferee after maturity, without notice of the usurious agreement.—*Aiken v. Waco State Bank*, Tex., 16 S. W. Rep. 747.

120. VENDOR AND VENDEE—Fraudulent Representations.—In negotiations for the sale of a platted lot of land the vendor represented that the lot contained five acres of land. A street ran across the lot, as the purchaser knew, and the area, exclusive of the street, was less than five acres. The price (at a specified sum per acre) was fixed on the basis of the area being five acres: *Held*, that the representation should not be deemed fraudulent merely because there were not five acres in the lot exclusive of the street.—*Michaud v. Eisenmenger*, Minn., 49 N. W. Rep. 202.

121. VENDOR AND VENDEE—Rescission.—Where one makes a deposit upon a contract for the sale of real estate, which provides that 15 days shall be allowed for the examination of title, and, if defective 30 days shall be allowed to perfect the same, he cannot sue to rescind, and recover the amount deposited, upon the ground of failure of title, before the expiration of the 30 days.—*Dennis v. Strassburger*, Cal., 26 Pac. Rep. 1070.

122. VENDOR'S LIEN—Damages.—One went into possession of land under a bond for title, a deed to be made by the vendor when certain infirmities of his title should be cured, which were specifically set forth. The vendee was temporarily evicted, and, in an action to enforce a vendor's lien, claimed special damages in consequence thereof, in that he had closed out a lucrative business, changed his residence, disposed of property at a sacrifice, and made expenditures looking to the occupation of the land during the season, which resulted in loss, etc.: *Held*, that these damages were speculative and remote.—*Gunter v. Beard*, Ala., 9 South. Rep. 389.

123. WATERS—Pollution—Injunction.—An injunction will not lie to restrain a city from discharging sewage into a stream running through plaintiff's land, lower down, and from emptying more than the natural flow of water therein, where, although the fish have been driven from the stream, and at times there is an offensive smell therefrom, not amounting to a nuisance, only surface drainage is allowed to run therein, and the small increment of water above the natural flow is never sufficient to cause an overflow.—*Bainard v. City of Newton*, Mass., 27 N. E. Rep. 995.

124. WILLS—Contest—Costs.—In a contest of the validity of a will, prosecuted in good faith and on tenable grounds, under section 44, ch. 20, Comp. St.: *Held*, that the costs of the contestant may be charged against the testator's estate according to the judgment of the court.—*Mathias v. Pitman*, Neb., 49 N. W. Rep. 182.

125. WILLS—Construction.—A will, after providing for the payment of testator's debts, recited that "I give and bequeath to my dear wife, for her own use and the benefit of our children forever," the residue of his estate, and appoints her his executrix and guardian of their children. *Held*, that such will vested a life estate, in the wife, with remainder to the children.—*Frank v. Unz*, Ky., 16 S. W. Rep. 712.

126. WILLS—Execution.—Revision N. J. p. 1247, § 22, which requires a testator to himself sign his will, is sufficiently complied with when it is testator's purpose to sign, and his best physical efforts participates in it, though his hand may have been steadied or guided by another.—*Fritz v. Turner*, N. J., 22 Atl. Rep. 125.

127. WITNESS—Transactions with Decedents.—Where the husband buys property, and has it conveyed to his wife under a verbal agreement that she shall deed it to him, but she dies without doing so, and he brings suit against his infant daughter, the wife's sole heir, to have the title decreed in himself, he is incompetent as a witness to the transaction between himself and wife, under Rev. St. Ill. 1874, ch. 51, § 2, and the objection to the competency of plaintiff as a witness is not waived by the failure of the infant defendant's guardian *ad litem* to object to his testimony.—*Johnston v. Johnston*, Ill., 27 N. E. Rep. 930.